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AUTHOR Vicenti, Dan; And Others
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ABSTRACT

Volume 3 in a 4-volume bilingual bicultural law-related curriculum concerns Navajo traditional law as it pertains to the family, and compares these laws and customs to those of Anglo society. Case histories (gathered using anthropological field techniques) were compiled by paraprofessional legal advocates, and provide materials to be used in classrooms for role playing and discussions. Legal aspects that affect Navajo family members are presented and compared to those of the Anglo law and cover such areas as: marriage; parent and child relationships; divorce--division of property, custody of children, and their support; role of family members in the division of labor; and inheritance patterns--water rights, land, houses, livestock. The type of land Navajos live on are described in terms of: reservation lands (majority live on reservations); satellite reservation areas; allotted lands (individually owned); Navajo tribal trust lands; United States Government lands; lands leased by the tribe; and tribal ranches. Teachers are encouraged to have the students (high school or college level) read and discuss the materials and use them for role playing, as well as compare their own family customs to those presented in the text. (AH)

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The Law of The People

DINÉ BIBEE HAZ'ÁÁNII

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A Bicultural Approach to Legal Education For Navajo Students

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BY
DAN VICENTI
LEONARD B. JIMSON
STEPHEN CONN
M.J.L. KELLOGG

RC 019077

VOLUME III

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RAMAH NAVAJO HIGH SCHOOL PRESS

T H E L A W O F T H E P E O P L E

DINÉ BIBEE HAZ'ÁANII

A Bicultural Approach to Legal Education
for Navajo Students

by Dan Vicenti
Leonard B. Jimson
Stephen Conn
M. J. L. Kellogg

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Ramah, New Mexico 87321

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THE NAVAJO NATION

Window Rock, Arizona, 86515

PETER MACDONALD
Chairman

FOREWORD

The Navajo people have long been ensnared in a legal web. Contact with the Anglo-American economic system which has become necessary for the Navajo people has brought a concomitant involvement in the confusing and, often contradictory, Anglo legal system. The Anglo legal system, for instance, in the areas relating to commercial transactions, has many aspects that are substantially different from the simple and effective traditional norms which have served the Navajo people extremely well for hundreds of years.

As a result of this confluence of legal systems, many Navajo people are at a serious disadvantage in dealing with Anglo merchants, car dealers and traders. In their dealings with these Anglo businessmen, most of the Navajo people are unaware of the pitfalls and the protections that are present in the Anglo -American legal and commercial systems.

It becomes increasingly important that the Navajo people understand the Anglo system and its relationship to our traditional Navajo "common law". To a large extent, the responsibility for acquainting all of our people with these matters rest with our young people. This excellent textbook clearly and simply shows many of the problems and difficulties which face the Navajo people when they deal in the Anglo system. It also indicates effective means for countering these dangers, and outlines the protections afforded by the Anglo legal system. This text and the course of study it envisions are important additions to our educational systems. I commend this instruction and I am confident that it will prove of great benefit to the students and to all Navajo people.

Peter MacDonald, Chairman
Navajo Tribal Council

I N T R O D U C T I O N

This book is intended to be a source book of the traditional and modern law that affects Navajo people today.

It is hoped that teachers will use it as the basic instructional text in classes on legal education and Navajo culture in secondary schools and colleges.

Furthermore, we believe that it will serve as a useful text for lay judges, lay advocates, police, social workers, and other people who deal with Navajo people and their problems. We believe that the material in this text will give these people new insights into Navajo social and business relationships, and especially the impact of law and tradition upon those relationships.

The paraprofessional advocate is taking on new roles in the Navajo Nation and in other Indian court systems. He will not only represent clients in court, but will help to conciliate their disputes. He will also enter the classroom and assist teachers in instruction about modern law, traditional legal ideas, and the problems of students and their parents.

For paraprofessionals of other cultural traditions, this text and the methodological approaches embodied in the interviews published here will direct them in the better performance of their present tasks and in the assumption of roles that are uniquely theirs.

Stephen Conn
Consulting Attorney

LAW AND THE FAMILY

MARRIAGE--TRIBAL CODE

There are basically three types of marriages in existence today between Navajos living on or near the Navajo Reservation and the checkerboard area in Northwestern New Mexico.

Not all three of them are treated as equally valid depending on the date of their inception. We will cover these three types more closely in terms of their validity, taking into consideration custom, the couples involved, the applicable sections of the Navajo Tribal Code, and their place in time in the history of the Navajos.

First is what is called common law marriage. These marriages, as far as we know, were in existence prior to the dates before the Long Walk to Fort Sumner. This was the most common type of marriage prior to January 31, 1954. This is the type of marriage where a man and a woman just begin living together and start having a family. There are no papers which would show that they have been married. Neither is there a tribal custom ceremony or any church ceremony where marriage is discussed.

Most likely, the couple had been seeing each other secretly for some period of time prior to actually starting to live together. Chances are that the woman might already have a baby or be expecting one. In these instances the man usually comes to live with the woman at her parents' home.

Although this is not so prevalent anymore, there are still quite a few couples who take this method in beginning a family. However, there is a great deal of emphasis placed on obtaining a marriage license, particularly by people who hold public offices, such as judges, chapter officers, and other people who in one way or another are required to ascertain as to the existence or non-existence of a marriage license of a couple they may be assisting.

For those couples who have a common law marriage, they can petition the Navajo Tribal Courts to have their marriage declared legal. The only requirement is that the couple prove that they were recognized as man and wife in their community prior to January 31, 1954. This was the cut-off date established by the Navajo Tribal

Council when they enacted the laws governing the validation of marriages. However, the Navajo Tribal Council did not specifically outlaw common law marriages.

If one of the common law marriage partner does not wish to join in petitioning the Court for validation of the marriage, then he or she can be named as a defendant in the petition. Also, if one of the partners is deceased, the surviving spouse can still petition for the validation of marriage with the assistance of witnesses who had knowledge of the marriage and home of the couple seeking validation of their marriage. In the event that both the husband and wife are deceased, the children of the couple can petition for the validation of their parents' marriage with the assistance of witnesses who knew the parents and knew they had been living together and that they had been recognized as man and wife in their community prior to January 31, 1954.

Another type of marriage in existence among the Navajos is called tribal custom marriage. According to the Navajo Tribal Code, this is as legal and binding as a marriage where there is a marriage certificate. This is a traditional and formal type of marriage ceremony. Traditionally, marriage often took place for economic and social reasons, and it was treated as an agreement between the families of the bride and bridegroom than anyting else. In the tribal custom marriage there are no age limits; however, the couple are usually fifteen years old or older.

Traditionally, when the parents of a boy felt that their son was grown up and that he was mature and responsible, they started looking around for a wife for their son. When they felt they had found the right girl, the father or uncle of the boy would go to the home of the girl and there bargain with the girl's parents in arranging for a wedding, if the parents of the girl agreed to allow the marriage of their daughter to the boy.

On the other side of the picture, the mother of the girl has been teaching her daughter since she was just a little girl how to cook, weave, card wool, and keep house, so that someday she would get a good "price" for her daughter upon marriage. She did not allow her daughter to go here and there to such events as sings, squaw dances, or other social events freely. In this way, she demonstrated to her neighbors that her daugher would be a good wife, cook, and housekeeper.

In the event that the two families agreed to join their children in marriage, payment would be discussed next. Payment usually consisted of livestock (sheep, goats, horses, and cattle), household goods, or, as is more often the case today, cash payments. The wedding itself was usually scheduled within a few days after the negotiations.

On the day of the wedding, the bridegroom came with his family and other interested relatives with the payment to the home of the bride. If the payment was not in cash, which was usually the case, the party brought with them a herd of sheep, goats, or horses. Sometimes they brought cattle, but this was very seldom, as very few Navajos owned cattle. This herd did not all go to the parents of the bride, because other close relatives, such as an uncle, might pick out a horse he liked. So it was a payment to the family of the bride, rather than to the parents, although the mother of the bride would get most of the payment.

In preparation for the wedding, the parents and close relatives of the bride prepared a big meal, consisting of traditional foods, such as mutton stew, roasted mutton, and fried bread. The mush was also prepared for the bride and groom. The mush is made from blue corn meal and cedar ashes.

When the bridegroom and the wedding party arrived, they were first fed the big meal which had been prepared. If there were any left-overs, they were allowed to take them back with them. After everybody had all they could eat, they all sat around and visited and became acquainted with relatives of the bride. In other instances the feast did not begin until the wedding ceremony was completed.

Soon after the sun went down, as many people as could fit filed into the hogan where the wedding would take place. Some sat around on the dirt floor near the couple, while others stood all around inside the hogan.

In the rear of the hogan sat the couple. Before the couple began eating the blue corn mush, the man pours some water over the girl's hands and she washes her hands. Then the girl takes the dipper or gourd and pours the water over the boy's hands and he washes his hands. Then the couple started eating the mush with their fingers.

The man takes the first dip beginning in the east and then to the south, west, north and finally from the center. After each dip by the groom, the bride does the same. After a few dips, the mush is passed around to other members of the wedding party, who all take some of the mush. The party must finish the mush.

When the mush is all eaten up, the basket becomes the property of the mother of the groom.

In the modern version of this custom, wedding gifts are presented and opened by the couple after the mush is eaten up. Traditionally, there were no gifts other than the payment by the family of the groom.

Following this, speeches are made by various people attending the wedding. The people are usually community leaders, such as chapter officers, councilmen, etc., and also relatives of both the bride and the groom. The content of the speeches usually is advice on what the responsibilities of both the wife and husband are, and what duties they each will have in the new home, and also some of the many problems which the new couple will encounter as they begin a new home.

One thing which is no longer closely followed in these traditional weddings is what is called the mother-in-law taboo. This practice was based upon a myth which says that a young married man must not look at his mother-in-law for fear that his eyes will become stiff or blind. For this reason, the mother of the bride is usually not present during the entire ceremony. However, you will find that the mother-in-law and son-in-law will no longer follow this practice after the wedding ceremony has ended. In the past, this practice often prevented the husband from visiting freely with his in-laws, although he was living close to them.

At the conclusion of the ceremony, everybody went home, except the groom, who stayed with his new bride at her parents' residence.

In more recent times, the bride and groom often obtained a state or tribal marriage license before the wedding and had witnesses sign at the wedding ceremony. In other cases, the couple would have another wedding in a church, where they would have the marriage license signed by the officiating clergyman.

The third type of marriage is what we will call formal civil marriage. Although a tribal custom marriage is as valid as this type of marriage according to the Navajo Tribal Code, more emphasis and importance is being placed on this modern civil marriage.

This type of marriage is made official by obtaining a state marriage certificate from the county clerk's office or a tribal marriage certificate from one of the five agency census offices on the reservation.

The requirements set forth in the Navajo Tribal Code for the formal civil marriage are as follows:

The male must be at least eighteen years old; the female must be at least sixteen years old. If the male is between the ages of eighteen and twenty-one, or the female is between the ages of sixteen and eighteen, they both need the written consent of both their respective parents or their legal guardians or the nearest adult relative with whom they live. If the minor is living with only one parent, only that parent's consent is necessary. In the event that there are no parents or other adult relatives, the Court of the Navajo Tribe must appoint a legal guardian, who can sign for the minor.

If the female is pregnant, then she and the father may be married regardless of their ages. The Courts of the Navajo Tribe may authorize the marriage of the minors without the consent of a third party if the female is pregnant.

Any adult consenting to the marriage of a minor is responsible for the support of any children born to the minor until the male reaches the age of twenty-one, or until the female reaches the age of eighteen.

The only other requirement is that both parties be unmarried, or if one or both parties were married before, the previous marriage must have been dissolved by a decree of divorce or by death of the previous spouse.

All other marriages contracted between Navajos and non-Navajos must be contracted by following the applicable state laws.

All plural marriages were outlawed by a Navajo Tribal Council Resolution approved by the Secretary of the Interior in 1945. However, there are still a few men who have more than one wife. They usually have one legal marriage. Any other wives are by common law, and are usually sisters of the first wife, or a daughter of the first wife by a different man. The basis of the practice of plural marriages is in several Navajo myths, where the heroes have in some cases as many as six wives.

In many of these plural marriages, the man just went from woman to woman. The women were usually sisters, or of the same clan. There was no formal method of leaving any of these wives. The man just left without saying very much. Sometimes one of the wives would leave because there was jealousy among the women. Also, the man would have to obtain the approval of his first wife if he wished to get himself another wife. For each wife that he had, the husband usually built a hogan.

As far as property among the Navajo couples and the population as a whole is concerned, it is treated substantially different than among the Anglo society. For example, there is no concept of community property in a marriage such as there is in the Anglo society. A traditional Navajo couple each have their own separate property which each brought into the marriage, and also property which each accumulated by trading or with income from their respective work such as weaving rugs or making silver and turquoise jewelry.

As stated above, when a man and woman marry in the traditional way, the man usually comes to live with his new wife at the home of the girl's parents. Perhaps he brought only a few head of livestock with him along with his personal belongings.

The most common properties of the early Navajos were usually livestock, grazing land, farmlands, and turquoise and silver jewelry.

The livestock was owned individually, but the family, (and in many instances the extended family) and several other families kept their flocks together. Everyone helped in caring for the sheep by herding or by caring for the lambs in the spring or by helping with the shearing. It was generally the responsibilities of the women folk and the children. Because of this the women folk exercised

almost exclusive control over the selling of the sheep, lambs and the wool and reaped most of the income. They owned the sheep. The spring following the birth of a new baby into the family, he or she was given an ear-mark and one or more lambs were given to him or her with the new earmark.

In contrast the grazing land was never individually owned. These grazing areas are referred to today as custom use areas. The family or extended family or two or more nuclear families owned the grazing area. It belonged to them as long as they used it. If they moved away, the next family who came along could claim it and begin using it. The grazing use area was passed on to the children when they grew up and started families of their own. The people using the use area moved around within the use area with their livestock. These use areas were usually bounded by natural boundaries. Today these use areas are still in existence and are covered by grazing permits issued by the Navajo Tribe and the Bureau of Indian Affairs. In many areas these grazing areas are hotly disputed with no solution in sight. This is the job of grazing committees and land boards, but they have done a very poor job in resolving the disputes.

The farms are similar to the grazing areas in that there were no individual owners except in isolated instances. Everyone contributed to its operation, but it was primarily the duty of the men folk. In the spring when these farms were being cultivated and planted everyone helped. The men did the heavier work such as plowing the fields while the women were busy making sure there was plenty of food for all the hungry workers. During the summer the men were the main ones who looked after the growing crops which were usually corn, beans, and squash. In the fall when the crops were being harvested, everyone again joined in bringing in the crops and preparing them for the coming winter.

Some of these old farms are still in existence today. In some places as you are traveling across Navajo-land, you can still see where some of these old farms were located. All you can see now are the old rotten posts and a few strands of barbed wire strung around the ground. However, in some places the farms are still being operated. As with the grazing areas, some of the farms are the subject of disputes.

One other property which was individually owned but subject to the use of the whole family were horses. However, some had a favorite horse which only he or she would use. Otherwise, the horses were used by all for riding and doing work around the home such as in plowing the fields, hauling water and firewood.

Some other property which was common in the old days and which is still very much in use as personal adornment and an indicator of wealth, or as the source of credit, is turquoise and silver jewelry. The art of making silver and turquoise jewelry is called silversmithing. This was primarily the trade of the men. The men made beautiful necklaces, bracelets, rings, and concho belts for themselves, the women, and the children. Some men decorated their saddles and bridles with silver work. The jewelry is worn for personal adornment and very often pawned at trading posts for food and other necessities. The silver and turquoise jewelry was also used as payment for services such as to a medicine man for performing a ceremony.

Today silver and turquoise jewelry is still very much evident. However, the art was slowly dying until just recently when it slowly began making a comeback.

The medicine man had their various paraphernalia. These were treated very specially. When a medicine man dies, the paraphernalia and other medicine could only go to other qualified medicine men. The paraphernalia could not be given just to anyone. It was given to someone who knew its use and chants. There are certain ceremonies which are performed in connection with giving the paraphernalia away to someone else.

The medicine men also had chants and other sings which were treated as his personal property. If someone stole it, he was punished by the spirits. Some medicine men also had special knowledge of certain plant medicine which they prescribed to other people only after payment was received.

Today the Navajos possess many more different things such as modern homes and cars. These are treated differently and will be covered under divorce.

PARENT AND CHILD RELATIONSHIPS IN THE LAW AND IN NAVAJO CUSTOM

Anglo-American law places in the father and mother of children important legal responsibilities for the well-being of the children. This care, and the maintenance of a home that is healthy for the children, is all a part of having custody over the children. Custody means that the parents also have the legal right and obligation to tell the child how to act if it means that he will be injured by his misconduct. Discipline is part of that legal right, although it is always different from pointless and excessive beatings that actually result in physical injury. Sometimes parents have emotional problems and cannot bear the important responsibilities of custody. They beat their children.

State laws require doctors to report evidence of "battered children" to the police and to welfare departments. The children may be removed and placed in the temporary custody of the state until the parent is given help with his emotional problems.

A two-step procedure exists for handing over custody to the state welfare department and the foster homes and parents that they provide.

The first step occurs when the welfare department shows to a court that a situation exists where there is neglect of the child's welfare, either because of a specific problem (as when a mother leaves an infant at home alone and then is arrested for disorderly conduct) or an extended situation in the home that can be proven by testimony of caseworkers who have visited there. Although the court may hear the case of the welfare department first and alone, and order it to act through its own employees or with the help of the police to remove the child from the situation of continuing danger to his health and morals, there is always a requirement that the parents be notified so that a full court hearing with both sides can take place. This hearing may result in the award of temporary custody to the welfare department until conditions have changed. The idea is that the welfare department will help the parent or parents improve the living environment so as to get their child back into the home.

What may happen, however, is that cultural, racial, and other factors may mean that there is very little mutual understanding between the caseworker and his or her idea of a healthy living environment and the ideas of the parents, between the caseworker's job and evident authority and the role of the caseworker as viewed by the parent as a kind of policeman who has taken his children from him.

The court is expected to hear both sides and neutralize these differences by applying definitions such as abandonment, neglect, or unfit parents to the facts. But, again, the process of the court can be so foreign to a Navajo couple that they do not know how to make the truth clear. The notice of a hearing is a complicated document to receive in a sheep camp in Monument Valley. Sometimes the sheriff makes very little effort to locate the parents, and they never receive notification until the date of the hearing has passed. Poor people who are not lawyers do not know how to protest this, and caseworkers do not tell them.

Caseworkers who work at low-paying jobs may not only be of a different cultural background, but may also be suffering from real delusions about Navajo people. Some people call this sickness the "messianic complex." They are like missionaries who want to change Navajo life, but who do more to disrupt it than to change it in any positive way.

A specific case of this lack of help occurred in Farmington. An Indian woman had to live as a housekeeper because she did not receive welfare money for herself and her child. The man that she worked for would call and complain when she left her child at her own house to go out and work, but she had to do this or lose her job and the money she needed to support her child.

The caseworker did not attempt to have her move and receive welfare money in order to improve her home life. Instead, she took her child for "neglect."

After the caseworkers decided that there is no possibility of creating a home situation that is conducive to the children, they may petition the court to terminate all parental rights. Again, the parents will get notification and a hearing. If they do not have a lawyer, they will have trouble understanding what exactly is happening.

The testimony of the welfare caseworkers invariably concerns the failure of the parent to work with or to cooperate with them.

One answer to all of this might be to have more Navajo caseworkers and Navajo judges to hear family problems.

The court also looks to see what is in "the best interests of the children." Although everyone would agree that this is a good standard to apply, different people would use it in different ways.

A judge who thinks in terms of the comfort and stability of a middle-class Anglo home may unconsciously think about this when he looks at a Navajo hogan where people do not have these same comforts. He may not see the importance of raising children to speak Navajo or to know their own culture and religion, because he assumes that all Navajos want to speak and think like Anglos, and this is best for them.

In short, the way that the caseworker and judge look at family life may be so different that Navajo people cannot ever satisfy them, even though they also want to do what is in "the best interests of the children."

The problem of different government people who have different ideas about what is right for children acting under the law for parents is one that Navajo people have felt for many years. How many generations of Navajo children have been removed from their parents' homes to live for years in dormitories and BIA schools? Only rarely did the teachers and dormitory administrators go to Navajo parents and ask how the child should be taught to act, what language he should speak, what he should learn there in the classroom and outside of it.

Navajo parents at Ramah, for example, want their children to be taught about the importance of clan relationships in social gatherings at an early age. But few elementary school teachers know enough to teach about this important subject in social relations.

Community controlled schools, such as the ones at Rough Rock and Ramah, try to reflect in their teaching the things that are important to life on the Navajo

Reservation and in the Navajo world, and not simply things for living in some city or in suburbia.

Navajo social workers and judges who hear child neglect and custody cases might know the most important fact about family problems--that Navajo relatives share the burdens of raising children and help work out the problems together. They do not usually move far from one another. Old people give guidance to Navajo parents and to their grandchildren. They are not made fun of, as is often the case in Anglo middle-class families.

The idea of hiring more Navajo social workers and judges for these problems does have its faults. The qualifications (usually college degrees) keep Navajo men and women from these jobs. Also, Indian social workers and judges may be convinced that the old ways do not apply. They may even have lost all respect for the old ways.

The case that follows is a true one. It shows the problems of a family in Monument Valley who live in the traditional way, where old and young share the responsibilities and the things that they own with one another when some of the parents are having trouble with drinking or with finding work. It also shows how the caseworker does not really see how a Navajo family that follows custom works together.

Case Summary: Leroy and his Children

In 1967, Leroy and his wife Lillie had two of their children taken from them and placed in foster homes because the welfare department decided that the way they were caring for them amounted to neglect, the failure to take due regard for their health and wellbeing.

The evidence used in the hearing against them was that they had been arrested for being drunk and that they had left their children alone for two days. Neither the welfare department nor the court realized that other family members in the sheep camp in Monument Valley also had responsibility for the children, according to the traditional way.

Mr. A and his wife did not understand the proceeding very well. They complained about the interpreter, who was an employee of the welfare department. Mr. and Mrs. A did

not respond to a notice about a second hearing because they did not understand how to give their side of the case.

When the welfare department renewed their petition for custody, they said that the father's whereabouts were unknown, that they had heard that he had stopped drinking, and that "the father has made no attempt to establish a home for the children." Mrs A had died.

Mr. A had, in fact, taken an alcoholic treatment in Gallup. He had a home with his father and mother and other relatives in Monument Valley, a traditional Navajo camp. But the welfare department expected him to have a separate home. They did not understand it when he said that his mother would care for the children, because this was not the Anglo way.

In 1969, the welfare department went to court and had the judge order that the children be placed in schools out of the area. The judge said that they could stay at the sheep camp in the summer, if they wanted to. Mr. A did not attend the hearing. Everyone's opinion was taken into account except for his.

Later, the welfare department informed the court that the oldest child did not want to go home. The social worker reported that she had "adjusted well" to the foster home.

A frequent trick of the welfare department is to remove a child from his natural home, report that he has adjusted well elsewhere, and then argue that to remove him again to his own home will be "disruptive" and confuse him. The social workers never argue that their own removal was the disruptive element.

Foster homes are rarely Navajo homes. They are usually very attractive to Navajo children, however, since they expose them to material luxuries that their own families cannot afford. The foster parent is paid to take care of the child. Even if the foster home is a happy one for the child, foster parents cannot <u>adopt</u> the children. Other people will adopt them. Usually, these are non-Navajo people. Because the sheep camp is not a fancy place, it is hard to become parents of adopted children if you live in one.

The social worker reported to the court, and later testified, that the father had shown "no interest" in his children. The "interest" was supposed to be shown by sending them presents (that Mr. A could not afford) or messages by way of the social workers (whom Mr. A did not trust, and in fact disliked, because he had taken his children away).

The two younger children, who were not taken away, were said to "have been in the care of various relatives and have received less than adequate care." This statement came from a man who visited the sheep camp for only a few minutes at a time, and who observed, did not understand that in the Navajo family, children are often cared for by other children.

Finally, in July of 1971, the welfare department asked that the parental rights, the legal rights and responsibilities of being a father, be terminated for the two older children who had been in foster homes. Termination means that children can be put up for adoption without the permission of their parents, just as though their parents were dead.

Ask yourself these questions:

1. How had the father "abandoned" the children: Did this mean that just by not trusting the social worker who had taken them that he had abandoned them?

2. Was it the father's fault that his children had been in the custody of the welfare department since 1967?

3. How would you get your children back if this happened to you, and you had no help from a lawyer?

4. What would you do if this happened to you and

   if the social worker lectured you on drinking and did not listen to your ideas

   if you did not write well in English and had no telephone

   If you were unemployed and needed your money to take care of children at home

if no interpreter was provided for you and you did not speak English very well.

The last point is most important. Look at the movie of the home life of the family involved in the case above, and then ask yourself whether it was true that the father did not have a home of his own and would be unable to provide the necessary care for the wellbeing of his children. Was it necessary to "provide another appropriate permanent condition for them"?

Look at the movie, and ask yourself--could it be that the welfare department did not understand how Navajo families live and work together?

Three important legal statements tell the story of this case:

The first is the statement by the attorney for the state welfare department. He argues that the court should act if it finds: (1) abandonment by the father, and (2) that he is an unfit or incompetent person in ways that would be harmful to the children.

The second argument of the attorney for the father and his family says that the state has not shown evidence sufficient to prove its claim.

The last, the opinion of the court, agrees with the parent's attorney.

Discuss the following question: Is it important to protect the rights of parents? Could Navajo judges and lawyers have been clearer in their understanding of the way this father felt about his children?

Listen to the tape of Dr. Bergman about Navajo people and authority figures, or read the transcript in this book. Is what he says correct? Do you think that the judge and the opposing attorney for the welfare department understood him? Do you think family problems of this type keep Navajo people from getting justice and defending their rights in court? How?

Dr. Bergman was a witness for the parents. Do you think that he helped the case? How?

LeROY GOODMAN CASE
Tape 1, Side 2

Richard W. Hughes
Dr. Robert Bergman
Opposing Attorney for the State
The Trial Judge

RH. I will merely say that in my case we will attempt to show that neither by word, nor by thought, nor by act has LeRoy Goodman abandoned his children, whose futures are at stake in this proceeding; that he has done nothing to evidence any intent to abandon them; and that, in fact, since the time they were taken from him, his only desire has been to recover them. We will further show that there is simply no evidence that he is an unfit father, or that he is incompetent to perform the responsibilities of a father; that, in fact, he could provide more than adequate fatherly care for these children; and that he could provide a healthful home environment for them. Your Honor, we have here today to testify Dr. Robert Bergman, of the United States Public Health Service. Dr. Bergman is testifying as an expert witness. He, unfortunately, is on a very tight schedule, and must fly to Many Farms, leaving here shortly after three. For that reason, I wonder if we could have the Court's indulgence, and allow him to testify first, so that we don't have any problem with him making his schedule. This will mean that some of the things about which he'll testify, there'll not really be any foundation laid in our case, but that will be established by testimony presented subsequent to his. Most of his testimony will relate to matters raised in the State's case. There won't be too much question of relevancy here. So I will call Dr. Bergman at this time.

RH. Doctor, would you state your full name, please.

RB. Robert Bergman.

RH. And what is your profession?

RB. I'm a psychiatrist.

RH. Doctor, could you give us your educational background?

RB. I received a bachelor of science degree from the University of Chicago and also a doctor of medicine degree from the same university. I served a rotating internship at the Cincinnati General Hospital and a psychiatric residency at the University of Chicago.

RH. And when did you complete your residency?

RB. In July of 1966.

RH. And, where are you now employed?

RB. At Window Rock, Arizona.

RH. And would you tell us the position which you occupy presently.

RB. I'm the chief of mental health programs at the Indian Health Service of the United States Public Health Service.

RH. In other words, you're directing mental health programs for Indian health services throughout the United States.

RB. That's correct.

RH. That includes all Indian reservations where the Public Health Service has operations.

RB. Yes.

RH. And how long have you held that position?

RB. Two years.

RH. Doctor, is it true that you have been with the Public Health Service since you finished your residency?

RB. Yes.

RH. And where have you spent that time?

RB. My permanent station has been in Window Rock, so I've been on the Navajo Reservation, except that in the past two years I've spent a fair amount of time traveling to other reservations.

RH. But you have, as a general matter, spent the past five years in and around the Navajo reservation?

RB. Yes.

RH. And what has been the nature of your contacts with Navajo people in these five years?

RB. I've worked with many Navajo problems, I have consulted with many Navajo teachers and other officials, Navajo groups; and I have treated in psychotherapy a number of Navajo patients.

RH. Have you had occasion to visit families on the reservation; or do you see them only in your office?

RB. I fairly frequently visit friends who live on the reservation, and I have, on a number of occasions, treated patients and their families in their homes.

RH. Are you married, Doctor?

RB. Yes.

RH. And do you have children?

RB. Yes.

RH. How old are they?

RB. They're six and four.

RH. Six and four?

RB. Yes.

RH. Doctor, as a result of your acquaintance with Navajos, professionally and otherwise, how would you describe your own personal knowledge of Navajo family tradition and Navajo culture? Would you say that you're well qualified to speak on those subjects?

RB. I don't think that I have the detailed knowledge that some anthropologists have, but I think I'm pretty familiar with Navajos and their life.

RH. Dr. Bergman, now, are you familiar with--as a general matter, are you familiar with the culture of the Navajo, the family camp?

RB. Yes.

RH. Could you, in brief terms, describe to us what a family camp is, and how it runs, and what the relationships are which exist among the persons who reside in a camp?

RB. Well, there's a great deal of variation, but ordinarily a camp consists of a number of people, living together, who constitute an extended family. In the ordinary case, if there is such a thing, the camp consists of a middle-aged or elderly couple with some of their children, usually daughters, and their families living in a number of hogans or other structures together, and cooperating economically and in many other ways, especially in the care of children.

RH. Could you elaborate on the care of children, and how it normally is handled?

RB. One of the most significant differences between Navajo family structure and that of ordinary middle-class Americans is the relationship of the child to a number of caring people. In general, the relationship to aunts and uncles is much more important in the Navajo family than it is to the middle-class American family. A great deal more responsibility is given to other members of the extended family, and there is considerable attachment of the child to the entire group.

RH. Would you say, then, that the parental role--if I'm mischaracterizing, please stop me--would that be that the role which the parent plays in the white American family is shared by a number of people in the camp?

RB. Yes.

RH. Assuming a situation where there was a camp in which there was an elderly couple with, as you say, a number of their children and their families, what would be the relationship of the grandparents of the children to the children who live in the camp?

RB. They would serve as models that the children would follow in their behavior, teacher, probably the final authority to which the children could appeal. In the ordinary good family they would be the leaders of the group, and the most respected people.

RH. And how, in your experience, do those individuals, the grandparents--how do they accept their role? Do they--are they eager about their role as being the main teachers, or do they accept it more passively?

RB. I think the ordinary Navajo grandparents are very ready to serve these functions for their children, and very anxious to.

RH. Doctor, taking a hypothetical situation of a family camp where there is an older couple and several of their children and their families, if a son of this family, of this couple, had several children but had no wife, by reason of death or other reasons, in the normal situation, who might be normally expected to care for the children of this one son.

RB. Either his wife's family or his family, presumably his sisters and brothers-in-law, and his parents.

RH. If this individual were to express an expectation that his parents or his sisters should care for his children, in your opinion would that, within the Navajo culture, constitute a dereliction of his parental responsibilities to those children?

RB. No, I think that, on the contrary, would be what would be expected and proper.

RH. This might be a little hard to answer, but considering that hypothetical situation a little bit further, what normal role would that individual, that son--what role might he occupy in the family camp? If this question is just too general to answer, please say so.

RB. I can say a few things. I don't know what it would be driving at. He would be expected to contribute economically to the family, either by helping with important tasks around the camp, or by holding a job somewhere and bringing home money and groceries, and whatever else is necessary. He would take part in group decisions about what the camp is supposed to do about various problems,

and would be an important person to his children.

RH. And, to the extent that he did participate in this way in the life of the camp, would, again in the Navajo culture--would he be considered to be fulfilling his responsibilities as a parent and father and member of the extended family?

RB. Yes.

RH. Doctor, to change the subject a little bit, as you are aware, many Navajo families are split up, with the children far away from parents for lengths and periods of time, for various reasons, throughout the year, for schooling and so forth. Could you comment briefly on communication between Navajo families who live in a traditional way and children who are frequently far from home?

RB. It's very difficult, because not very many members of the older generation of such families are fluent enough in English and at ease enough with writing and reading it that they can communicate well or easily by mail. Many patients and friends have remarked to me that when they were away at school or in the army they were--they frequently wrote home themselves, but didn't receive any mail from home because there was nobody who was used to writing.

RH. Did they regard this as normal, or were they annoyed?

RB. I think a little of both. I think it would be expected, but I think in some cases they wished that somebody knew how to write them.

RH. With that same situation, are you familiar with the feelings of families towards children, or other relatives, close relatives, who are far away?

RB. Well, I know many people whose children are off in the army or off at school or something of the sort. I think most of them feel very deeply the separation and feel quite sad at the departure of children, and lonely for them when they're away. I think often the children away are not talked about very much, because it's a little painful. Navajo families, I think, integrate close.

RH. So, the family ties are very close, as a general rule?

RB. Yes.

RH. Doctor, have you, in the course of work, done any--had any professional responsibilities associated with alcoholism?

RB. Yes, many of my patients come to me because of their drinking problems. I have served as a consultant to a number of alcoholism treatment programs. Within the program which I direct there are several alcoholism treatment programs.

RH. Are you familiar, then, with case histories, especially where treatment was attempted, with subsequent results?

RB. Yes.

RH. In your experience, where a person who has been a serious alcoholic undergoes treatment and then for a period of, say, two years abstains from alcohol, what would you say the chances are of being a success, in the terms of winning the battle, in effect, against alcohol in the future?

RB. In general, such a person has a very good chance of remaining sober after that length of time. I think that's particularly true for our Navajo patients, that the critical period is between six months and a year. When people are past that point, the likelihood of their holding, of their remaining sober is quite good.

RH. The critical point, you say, is between six months and a year. After the end of treatment?

RB. Yes. After the end of hospitalization or some kind of in-patient treatment.

RH. And when such a case fails, in other words, when there is a backsliding, can you describe whether it's normally a rapid plunge back into heavy alcoholism, or is it sometimes very gentle? What is the normal case?

RB. Well, there's a great deal of variation. There are a number of people who, after remaining sober for some time, will occasionally begin to drink, and things may be

very bad for a period of time, from anywhere from a few days to perhaps a few months; and then they stop again. Hopefully, if a particular treatment is continued, the periods between such lapses will increase, and the length of the periods of drinking will decrease.

RH. Is that kind of thing likely to continue for any length of time in several years, or--

RB. Well, it's very hard to predict this sort of thing. Some research that has been done on the Navajo Reservation has shown a very surprising, compared to similar research elsewhere, a surprising percentage of people who stop and never even start again, particularly people who've been drinking for, oh, ten or fifteen years.

RH. I think there's nothing else.

OPPOSING ATTORNEY. Dr. Bergman, I guess you find as much variation in Navajo families as non-Indian families in their mores and demeanor and family life, don't you? Quite a variation.

RB. Well, within any one group of non-Indian families. The whole world of non-Indian families is rather large.

OA. But amongst the Indian families, there are many differences, aren't there, in their family life and way of living? They're just as human and individual as anyone else, isn't that right?

RB. Yes.

OA. Same problems, same qualities. That's all I have to ask. May the court please to question?

JUDGE(?). Did I properly understand your testimony, Doctor, in saying that some of these projects you've worked in, the research indicated that there's a better recovery date--would that be a way of expressing it?--among some Navajo alcoholics than--

RB. Yes.

J. Did you determine in your association with these people a difference in the way a father--I'm referring to Mr. Hughes' hypothetical question about the role of a son who has children but no wife, and lives in a family camp--would you detect a difference among the Navajo culture in the way the expression of feelings, or the way this father would react in relation to his children, than in the conventional Caucasian home, white home?

RB. Yes, I think there are some differences.

J. Around the issue of to what extent they show affection, or in what ways they might show affection, or in what ways they might deal with these children?

RB. Well, I think that Navajo families are certainly as affectionate as any other families. I think the paternal role, like the maternal one, is shared more, so that, among a white middle-class American family, certain things that would seem to be dereliction would be more expected or accepted among Navajo families, because there is greater sharing, and because there is more expectation, for example, that the father might be absent from the home for a time, particularly if there were some economic reason.

J. What if the children were away and removed, and the father didn't contact them or do things that would be ordinarily expected of a father who was interested in them and affectionate for them in white culture, you would say this was not a significant indication of lack of interest.

RB. It would depend on the circumstances--where the children were, how easily he felt he could communicate with them. To give an example of what I mean, as part of my program, I operate as part of a boarding school, a dormitory where two hundred Navajo children live. In one of our great efforts to help the parents to feel comfortable in the school, so that they will visit their children more often, right at the beginning we realized after a while that many of the parents felt so much anxiety and discomfort in the school that they came less frequently than they wanted to. When they found that they were welcome and that we wanted them to come, they came more often and more readily.

J. They were apprehensive, then, in doing what they wanted to do, in view of the circumstances they found themselves in.

RB. Yes.

J. They were not conversant or capable of communicating in the sense of expressing these feelings until someone recognized them.

RB. Well, I think they had a feeling that the school was an awfully foreign and forbidding place and proven experiences with other white institutions made them feel that they might not be welcome inside.

J. I have no more questions.

OA. Well, I was wondering--these parents, it was explained to them that they were welcome at the school and they were made to understand how the school was operated? Was it normal, then, for the parents to feel more at ease, and show more interest in their children?

RB. It took more than an explanation.

OA. Well, more than one explanation, but several explanations?

RB. It took demonstration; for example, the big turning point for this particular project was when, at the beginning of the school year, before this, when we gave a big Sunday lunch and invited all the parents to come, and welcomed them and the children back to the school. I think that experience of hospitality convinced a lot of them from the very start, but that was after several efforts already.

OA. And that took the effort of someone outside the family to welcome them in and to educate them, I guess you could call it, to the realities of the situation--that they were important and welcome.

RB. They knew they were important; they didn't know they were welcome.

OA. Well, but they needed to be educated to that. And then they respond, if the opportunity is afforded them, is that right? They need the opportunity to understand. But that's the way everyone is, really, isn't it?

RB. Yes. Well, the experience, I think, of being pupils, the parents, and the children in our school has been quite negative, in terms of judging other schools. From time to time, other schools have done a fair amount to keep parents away, and we have to overcome that bad experience.

OA. Sometimes there's some questions as to the various systems of transporting children away, and what not.

RB. Yes.

OA. But you find it's generally normal for these Indian parents to respond to overtures to make them welcome to the school and to understand the true role of the parents, and what the parents should be doing and what the children are doing?

RB. I don't think you have to educate them to their role as parents.

OA. In regards to the children being in school--

RB. Yes.

RH. I'd like to put one or two other questions to the doctor. Doctor, you reminded me of what I wanted to ask you--is it possible, and could you elaborate on whether or not the anxieties which you speak of in regard to the parents approaching a school might have been more intense because the school is run by Anglos; in other words, would a parent be more responsive to a Navajo, and is the presence of Anglos more of an inhibiting factor?

RB. Yes.

RH. What would you say as to the likelihood of a Navajo parent expressing to Anglos, particularly Anglos in an official position, the parent's anxieties with regard to the children?

RB. I think--I hate to generalize.

RH. All right, then, let's put it hypothetically, or take the hypothetical case of a Navajo parent whose children have been placed several hundred miles away from him. If you can't generalize, don't try. What is the likelihood that the parent would feel free about expressing his anxieties with regard to the children, that he wishes to see the children, and so forth, to Anglo officials who bear the responsibility for removing the children from the home?

RB. I think he would, under considerable pressure.

OA. Wouldn't the Navajo respond to these Anglo officials coming to them, and telling them to prepare themselves for having these children return to them, if he wanted them returned?

RB. Well, under certain circumstances there is gross misunderstanding.

OA. But if there is no misunderstanding, then would it not be normal for the Navajo parent to cooperate with the officials, and respond to their overtures?

RB. If things were properly understood, yes.

OA. That's what we call normal, I guess, the normal situation.

RB. I think it's not normal for there to be good understanding between white officials and Navajo families. It's unusual.

OA. Well, what do you base <u>that</u> on?

RB. The experience of five and a half years.

OA. That you can't communicate properly, is that what you man?

RB. Well, I can, but in the ordinary realm of events on the reservation, there are a great number of families and many relationships between official institutions of one kind or another and Navajo people. It has taken us an enormous effort to overcome some of those problems and I think we've come pretty close. I gotten tremendous personal understanding through my own program.

OA. You say the problems are caused by language differences, or--?

RB. Well, language and history. A little bit of distrust on both sides, and considerable language difficulties, even with the help of interpreters. In our program, for example, the people who deal with non-English-speaking patients or families, we give them ample training before they're good translators; and good translators require more than a knowledge of the two languages to avoid difficulties in communications. The two languages are very different; the two societies are very different. And doctors and patients, social workers and clients, and lawyers and clients, and any other such people who misunderstand each other very seriously all the time.

OA. Those misunderstandings, would they still occur more if there is less communication between the Navajos and the officials, say, because if there's repeated communications between them, there should be a better chance for understanding, wouldn't you say?

RB. The misunderstandings begin to pile up, and it sometimes happens, and I'm trying to think of an example, where two people with all good will toward one another would quite misunderstand one another's intentions.

OA. They can try, and try, and if they don't have good will towards each other, then it can even be more of a serious thing. But what I'm saying is, ordinarily the more attempts that are made to communicate, there should be a better chance to communicate and cooperate--isn't that true ordinarily?

RB. Yes.

OA. That's all I have.

DIVORCE: COMMON AND TRIBAL CUSTOM MARRIAGES

Traditionally there is no formal method for the dissolution of custom marriages. Traditionally it was informal and easy to divorce your husband or wife. However, because the Navajo family is matrilocal, it was usually the husband who left the family home. Matrilocal means that a newly married couple established their new home close to the residence of the mother of the girl.

Instead of talking about getting a "divorce", parents, relatives, and concerned friends of either or both of the couple would arrange a meeting where the problems facing the couple would be brought out. This was done in an attempt to solve the problems and to keep the marriage intact. The people who were most concerned were usually the ones who were present at the time of the custom wedding. The reasoning behind this is that most likely they participated at the wedding by speaking out and advising the newly-weds of the many problems which they will face and what each of their responsibilities and duties are to one another and how they should treat one another. If any problems do arise they want to be there because they do not wish to have what they said at the wedding go unnoticed. They want to reinforce them again by speaking to the couple, reminding them of all that was said at the wedding.

Sometimes when these meetings are held important and influential leaders of the community are invited to participate. These are usually councilmen, chapter officers, naat'aaniis, medicine men, and other eloquent and knowledgeable speakers of the community.

Their role is usually to give a lecture to one or both parties and to give them advice based on their experience and also the teachings handed down to them by their fathers, mothers and grandparents. They usually advise the couple to remain together for their own sake and for the sake of their children.

This type of concern is not only demonstrated where custom marriage was the method of joining the couple in marriage, but in any type of marriage where there is friction. The main thing is to keep the marriage intact. If one party stalls and does not wish to return to the other spouse, then no further attempts are made to bring the parties back together. Instead what usually happens

is that if it is the husband who wants to leave, he is asked to leave all the property for the support of his children. If it is the wife who wants to leave she is also permitted to leave but only with her personal belongings. The children remain with the remaining parent and are reared with the assistance of the extended family.

The most common causes of family disruptions are adultery, jealousy, mistreatment, desertions and excessive use of alcoholic beverages.

There are stories where a husband cut off either the nose, the ears, or the breasts of the wife if she was caught committing adultery. However, these were later discontinued because of the Federal Government's intervention. Thereafter payment from the third party offender to the offended marital partner was usually the solution to the offense. Payments was in terms of livestock, jewelry or other valuable material such as a buckskin.

There are several traditional methods of divorcing one's marital partner and we will cover here only the ones which are better known. The easiest and best known is when either the husband or wife simply walks out of the family home. The only things he or she take is his or her personal belongings. In plural marriages it is usually one of the wives who is dissatisfied and leaves the home and returns to her mother's residence. If the family home was at her mother's residence, she just moved out of the hogan. If it was the man who left the home, chances were good that he had another wife somewhere all lined up and he would go directly over there to begin a new home. Otherwise he would just move back to his mother's residence.

Another method of divorcing your husband was by placing his personal belongings outside of the hogan while he is away from the home. When the husband comes home he knows what this meant. These personal belongings included his clothing and other things which only he used, such as a saddle. Another method available was just walking out and taking a portion of the livestock with you.

When a man was divorced or separated from his wife by custom he would more than likely lose all the property

which existed including any property which he may have brought into the marriage. The reasoning was that the man is able bodied and can very well go out and find work and begin the accumulation of property all over again. He didn't have to worry about anything like child support or actually caring for his children.

The wife on the other hand was thought of as not being as physically strong and could not readily find the means to support herself and the children. "You can go, but you must leave everything for the support and enjoyment of your children," the husband was told. The wife raised her children by herself with the assistance of the rest of the extended family. The husband suffers dislocation and financial loss.

Another factor which we will cover a little later on is the fact that upon marriage, the husband and wife maintain their separate property. This made the wife relatively independent economically. She kept the sheep and goats which she could sell and whose wool and mohair she could sell or weave into rugs and sell to the trader.

There seems to be at least three words in the Navajo language which describes the dissolution of a marriage. One is where the husband and wife mutually agree to leave each other. Another describes more or less a case of desertion or abandonment. The third one describes one spouse forcing the other to leave the family home.

The foregoing methods of dissolving one's marriage is followed to some degree by couples who are married by all three types of marriages described above, but it is practiced more in common law and tribal custom marriages. The case of desertion or abandonment is more prevalent than any of the others. It is the most common cause of family disruptions. The woman retains her property and the children. The woman usually takes all of the man's property except his clothing and a few personal items.

If the marriage is successful, the husband and wife may build their own hogan and begin a more independent life. They may also separate their livestock from the family herd. In this way new extended families were begun.

The Navajo Tribal Code does not recognize any of the above mentioned methods of dissolving one's marriage. Instead the Navajo Tribal Code states very explicitly that anybody who claims to have been married by tribal custom or formal civil marriage must be properly divorced through the Navajo Tribal Courts, and obtain a valid decree of divorce. Divorce in common law marriages is not possible unless the couple were recognized as man and wife in their community prior to January 31, 1954, and later had their marriage validated by the tribal courts in accordance with the statutes governing the validations of marriages.

However, the Navajo Tribal judges have not been interpreting this statute correctly and have refused to allow anyone to file for a divorce where there is a tribal custom marriage but no marriage license either from the state or the Navajo Tribe.

In one such case an advocate attempted to get a Writ of Mandamus from the Court of Appeals of the Navajo Tribe in Window Rock, ordering the trial judge who refused to accept the client's divorce petition to permit the advocate to file the petition with the court. However, a licensed attorney who advises the Chief Justice of the Court of Appeals informed the advocate that the Chief Justice had refused to issue the Writ because "it was not nice to do this to a fellow judge." The Chief Justice later issued an order which stated that the advocate could file the petition for divorce with another trial judge <u>provided</u> there was a valid marriage license between the couple.

However, the statute (Title 9, Navajo Tribal Code, Section 257) only says that if you are married by tribal custom and claim to have been divorced, you must have a valid decree of divorce issued by the Courts of the Navajo Tribe.

<u>DIVORCE: NAVAJO TRIBAL CODE</u>

So, although there are three basic types of marriages in existence among the Navajos, there is only one recognized method of divorcing your marital partner. That is by following the statutes contained under Title 9, Navajo Tribal Code, <u>Husband and Wife</u>, and also <u>Divorce</u>.

There are basically ten grounds under which a couple can be divorced. They are as follows:

1. That the party in whose behalf the divorce is being sought was under the legal age for marriage, unless after reaching the legal age such party continued to live with the other as husband and wife freely for any length of time.

2. That the former husband or wife of either party under a tribal custom or other ceremony was living and the marriage with such former husband or wife has not been properly dissolved.

3. Unlawful voluntary sexual intercourse of a married person with one of the opposite sex.

4. When either party has wilfully abandoned the other, or caused the complaining party to leave against his or her wishes, for the term of six months preceding the commencement of the action.

5. When one of the parties uses intoxicating drinks, or narcotics habitually to the mental anguish of the other.

6. When one party inflicts grevious bodily injury or grevious mental suffering upon the other.

7. Neglect on the part of the husband to support his family according to his means, station in life, and ability.

8. Inability to live together in agreement and harmony (Incompatability).

9. In favor of the husband when the wife was pregnant at the time of marriage by another man other than her husband, the husband not having knowledge of such, provided action is commenced within a reasonable time after the fact becomes known to the husband.

10. Voluntary separation of the husband and wife for a period of one year or more.

The only other requirement for a person to file for a divorce is that he or she has to live on lands subject to the jurisdiction of the Navajo Tribal Courts for at least

ninety days and that the party seeking the divorce pay a filing fee. The tribal courts have jurisdiction to dissolve marriages where there is state or tribal marriage licenses. One other requirement is that the defendant be an Indian.

The matter of paying a filing fee in filing a petition for divorce has not been resolved so far as the tribal courts are concerned. The United States Supreme Court during the spring of 1971, in a case entitled Boddie v. Connecticut ruled that it was a denial of due process when states denied access to their courts to indigent plaintiffs when they could not pay the filing fees. The Navajo Tribal Courts still require plaintiffs to pay filing fees in the majority of cases. In a few isolated cases the more understanding judges waive the entire filing fee or reduce the filing fee. If a study was made of the financial background of the people who filed for divorces, it could easily be seen that at least seventy-five percent could qualify as indigents.

A CASE REVIEW: DIVORCE

The following example of a family (husband-wife) dispute which took place during 1971 in the Eastern Navajo Agency gives an excellent example of how disputes of this nature were resolved traditionally. The example gives excellent insights into the role of the husband and wife and also the role and authority of the people before whom disputes such as the one which will be covered here were brought and acted upon.

The case, which we will call Helen v. Ray, was brought before the Community Action Committee of the local chapter house. The Community Action Committee is a group of prominent local citizens which is selected by the general membership of the chapter house. The Committee is a part of the Office of Navajo Economic Opportunity Local Community Development Program. Their primary function is to serve as an advisory group for all programs which are operated by the Office of Navajo Economic Opportunity.

However, as we will soon see, the group is involved in many other community activities and problems of the membership of the chapter. They are called upon to attend various meetings and social functions which take place

within and outside their immediate community. In this particular instance they are called upon to hear a problem which existed between Helen and Ray and attempt to resolve the problem.

In this case, the husband, Ray, had been fooling around with Suzie, a first cousin of Helen. The affair had been going on for about one year according to Helen. Helen stated she knew about this affair but didn't do anything about it because Suzie was her sister. Among the Navajos a first cousin is considered the same as a brother or sister.

It was only after pressure had been applied by relatives and friends, who knew about the situation, that Helen decided to do something to correct the situation.

It was at this time that the problem was brought before the Community Action Committee for solution. In reviewing the minutes of the meeting, one member expressed some doubt as to the committee's jurisdiction to listen to the problem. However, the committee proceeds to listen to the problem and reaches a solution based on the testimony presented by the couple, Suzie, and other relatives who attended the meeting.

The first person who was questioned is Suzie. She came out and admitted that she had been having an affair with Ray. She also stated that she will go and marry Ray if Helen divorced him.

Helen is questioned next. She testifies that she did not hold any bad feelings against either Ray or Suzie. She stated that it was all right with her if Ray and Suzie got together since Suzie is a "close sister." However, she wanted to maintain the custody of the children and she wanted Ray to pay for all the bills they had including payments on a pickup which she wants to keep. There are other property but it all went to Helen except a car which Ray kept.

There was an agreement also on child support but the nature and schedule is not recorded. This is a departure from the traditional ways of resolving these types of disputes as is brought out above under tribal custom divorces. There we see that since all of the property remained with the wife and children, and also since the wife was very much independent economically and received

assistance from the extended family, there was no need for additional support from the husband.

Last to be questioned is Ray. He is in no position to bargain strongly since it is very apparent that he is the mate that is at fault. He agrees to everything that Helen has requested.

At the conclusion of the questioning of the three people (Ray, Helen and Suzie), other relatives in attendance are given the opportunity to voice their opinions as to how they feel the problem should be resolved.

Suzie's mother is concerned about her niece, Helen. She states that Helen does not have a mother to whom she could return. Ordinarily, Helen would have returned to her mother if she had been living separately from her, or if she was living near her mother's residence, she would have had the moral support of her mother. But Helen does not have a mother and thus the concern expressed by Suzie's mother. Suzie's mother also suggests that Ray and Suzie pay Helen and her kin. This is not resolved and the logical answer is that Helen and Suzie are of the same clan and are sisters. If payment was made it would have been between sisters and within the clan. This was not practiced traditionally but was frowned upon.

In many of these types of cases payment was indeed demanded and paid. The payment is for the taking away of sexual rights. Sex has been traditionally viewed as a property right. If Suzie and Helen were not related in any manner, then payment would have been demanded of Suzie and her clan. In such event, Suzie and her clan would all get together and help make the payment which usually consisted of property such as livestock. The payment demanded for this sexual right does not only come into the picture in divorce cases but also where children are born out of wedlock. In the latter instances payment is demanded of the father by the mother of the girl. Payment of this nature is also demanded in cases of rape.

Another fact brought out and one which makes this an ideal case to study and gives real meaning to the meeting itself is that Helen and Ray do not have a marriage license.

One individual states that even if Ray and Helen were brought back together there would be trouble between them forever. This is not common since the purpose of a meeting such as this one is to keep the marriage intact for the sake of the husband and wife and particularly the children. Perhaps the success of the meeting arises from the fact that Helen and Ray were both willing to dissolve their marriage without fighting.

The role that the Community Action Committee members played was the same as that of headmen and other important members of a community in the past when disputes of this nature arose and were brought before them for solution.

One difference which is worth mentioning is that the headmen of the past knew everything about all the people within their respective community. When a problem was brought before them they would meet with the parties involved in the dispute. During the meeting only the headmen carried on a discussion about the problem before them. They discussed the good and bad of the wrongdoer and arrived at what they felt was a just and reasonable decision.

Note to The Teacher:

Have the students also read an article written by Sandy Hassell for the Desert Magazine, entitled "Navajo Justice." The article appears in the January, 1951, issue. It is an excellent article about another divorce case which was resolved in a similar manner.

DIVISION OF PROPERTY

Let us next examine how property accumulated prior to and during marriage is divided or all given to either the husband or the wife when they are divorced through the Navajo Tribal Courts.

First of all, any property which either the husband or wife had before they got married remains their separate property. This includes real and personal property. Also any gifts received by the husband or the wife remains as separate property. Also any property received by descent or through a will is treated as separate property. Any money received from any of the above such as rents, profits, or interests also remains as separate property. Only the husband or the wife can dispose of their respective separate property.

If a woman and her children become separated from her husband and earns money and acquires other property, such money and property become her separate property.

If either or both the husband and wife contracted for debts before they were married, then the husband's separate property is not liable for the wife's debts, and vice-versa. We shall see later under what circumstances separate property of either or both parties can be disposed of without their permission through a court order.

What is community property? This is all property acquired by the husband or the wife, or both during the time they are married and living together. This does not include property and other things described as separate above.

While they are married, only the husband can dispose of the community personal property and only the husband can contract for community debts where the community property would be liable.

The only time the wife can contract for debts is when she is living apart from her husband and she is buying the necessities of life for herself and her children. But this can only be upon the credit of her husband and she cannot commit the community property. In the event a civil suit is initiated by the creditor to collect this debt, the creditor must sue the husband and wife jointly.

If execution on the property of the wife and husband is ordered, execution must first be upon the community property of the couple to satisfy the debt. If necessary then second comes the separate property of the husband, and last the separate property of the wife.

In some areas there are laws which say that a person who is 21 years of age or younger cannot contract for debts. However the Navajo Tribal Code states any man and woman, who are legally married and are between the ages of 18 and 21, shall be legally responsible for any transactions which involve their real and personal community property, the same as if they were 21 years of age or older. Furthermore, either party can do anything he or she wishes with that portion of the community property which is awarded him or her at the time of the dissolution of the marriage.

Community obligations are those debts which are outstanding and incurred during the course of the marriage. These do not include those debts which existed prior to the marriage of the couple.

In the majority of the divorce cases which comes before the Navajo Tribal Courts the determining factor in the division of the community property is the matter of which marital partner is awarded custody of the children.

In any event it is usually the wife who is awarded the custody of the children unless she is found to be incompetent and unfit by reason of her use of alcoholic beverages or such other physical disability that she may have. If she is awarded custody of the children, she is likely to receive the majority or all of the community property on behalf of the children. This may include the home unless the home is permanently situated on allotted land belonging to the husband in which case the wife would receive all the household furnishings except the house or hogan.

As far as livestock go, this depends upon the size of the herd and the number of sheep units for which the couple held a grazing permit and also the type of land and its location with respect to the area from where either the husband or wife came from. If the grazing permit covered public domain land and the allotment of the husband, the husband will most likely be given the whole permit and all of the livestock. If the husband did not come from the area where the grazing use area is located,

but from another community, the permit will probably be given to the wife.

What the tribal judges sometimes do is refer the problem of the division of the grazing permit to the land board or grazing committee in the area and later make a decision based upon their recommendation.

DIVORCE: CHILD CUSTODY AND SUPPORT

Perhaps the most important aspect of a divorce case is the matter of the custody and support of the children involved. In many instances, long after the divorce is granted and community property and debts have been settled, the couple are still fighting in court about the amount of child support being paid or the lack of payment of the child support. Many times the state and BIA welfare departments are in the midst of it because they are actually the ones to be paying for the support of the children. They demand that the mothers prosecute their ex-husbands and get the tribal courts to get them to pay. This inspite of the fact that most Navajo males are unschooled, unskilled and unemployed.

Another thing which has to be settled in the divorce decree is the matter of the payment for community debts. This is usually divided evenly depending upon the number and the amount of the debts and also the amount of support which the husband is required to pay.

So much for the matter of community property, debts, and child custody and support.

ROLES IN A FAMILY

There is no distinct breakdown of the role of each member in a traditional Navajo family, as far as work around the home is concerned.

The men generally did the heavy work, such as wood and water hauling, hunting, and building the barbed-wire fences. They also looked after the horses, cattle, and sometimes the sheep and goats. They also built the hogans and corrals and planted and cultivated the small farms.

The women's place was in the home, but oftentimes the women were seen doing some of the heavier work normally done by the men, such as chopping firewood and hauling water. The women were very self-reliant when their husbands were away. Normally, the women did the cooking and took care of the home. The woman carded and spun the wool which she later wove into beautiful rugs and sold at the trading post. She took care of the children and was the main parent who taught and disciplined the children. Here again, the idea that the children belong to the mother and her clan is probably the basis for this. The mother knew the children were more "hers" than the father and assumed the responsibilities for them and handled them very well. As one informant stated, "the husband is there primarily as a helper."

Traditionally, the women of the household held a very important and responsible role in the home, both in terms of her financial contribution to the family, and also in terms of her function within the family. The woman was practically the head of the household, as the man is considered the head of the household today. She was economically very independent, because she owned sheep and wove rugs which she sold.

Since the women handled most of the work connected with sheep raising, which was one of the most important economic activities in the old days, she had a great deal to say about the wealth and consequently the social status of her family in the community, so how hard she worked was very important to the well-being of her family. She was indispensable to her husband's well-being.

On the other hand, the husband was more of a helper to his wife and protector of her property than the head of the household with the responsibilities and duties as we see them today. He was less indispensable to his wife in the old days. His main function as the formal head of the household was dealing with other people outside his family and his wife's extended family.

As far as teaching and disciplining the children was concerned, this was primarily the duty of the mother and, more often, the maternal uncles. The father's role was mainly affectional. Again, this was because the children are constantly under the control and direction of their mother's extended family. As a result, the children inherited very little from their father, because most of his property went to his mother and brothers and sisters. The children, particularly the boys, inherited mainly from their mother and maternal uncles.

If a daughter or son got out of line, the mother usually reported this to the children's uncle, or, in some instances, to the maternal grandparents. The uncle or the grandparents dished out the punishment or gave a lecture to the child.

The children also had duties and chores which they had to do around the home. The children started helping with work around the home at a very early age with such matters as herding sheep, bringing in water or firewood, with the girls helping to cook meals with their mother, and the boys helping their father with the horses and other work which the father had to do around the home.

The children were constantly reminded that if they wanted to be a success some day, they must always be up early in the morning, and sometimes they were rolled around in the first snow of the winter while naked. They were told not to be lazy and to always push themselves as far as they could, so they would have a long and fruitful life. The good men and women were hard-working, dependable, honest, and always ready to lend a helping hand. The children were told not to be lazy and lying around, because if they did this they would never amount to anything. They will always be poor.

As the children grew older and approached adulthood, their work became more and more that of their mother and father. The daughter received training in

cooking, keeping the house, carding and spinning wool, weaving, basketmaking, and so forth, in preparation for the day she will begin a new family. The mother anticipates a good bridal "price" for her daughter. The boy helped his father and worked with his uncles around the home with the heavier work. They built and repaired fences, they did the farm work; they cared for the horses and cattle, they went after the wood and water, they hunted, they went to sings and squaw dances, and learned about the myths and legends of the Navajos.

But today most of this has changed. No longer is sheep raising a big economic activity that it once was. No longer do the women occupy the important economic and social position that they once held.

Through increasing contact with the outside world, the Navajos have become more familiar with new things, new ways of doing things, jobs, and with these new things have come different problems.

Livestock and farming activity has greatly diminished as well as weaving of rugs and silversmithing. In the absence of these traditional sources of income, many Navajo males have left the home to find work in towns bordering the reservation and even in other states far from home. In contrast the woman's place is still primarily in the home doing housework and caring for the children. In some instances the women do find work but they are usually paid a very poor wage compared with the men.

All of the foregoing has had a very noticeable effect on the existence of the extended family, the basic nuclear family and the role of each member within each unit and the importance they played.

The basic nuclear family (mother, father and children) is becoming more independent and the tendency is to establish a separate home instead of living initially with the girl's parents. The women hold a lesser important position both economically and socially but in some homes the mother and father still share many of the former responsibilities. However, the men assume most of the economic responsibility and as a result are absent from the home more frequently.

Another factor is that the children are placed in school some as early as they are five years old. This relieves the mother of this responsibility a majority of

the time and gives her more free time. But she does not know what to do with all this additional free time and causes her to complain at times. Housework is made much easier with new tools and other goods. There are many more types of food which makes cooking a less time consuming chore.

Religious ceremonies and other traditional forms of recreation are disappearing. Instead the Navajo families now go to nearby white towns to see a movie or other activities. The men go there to drink which causes further disruption of the basic family unit.

The white education which the children are required to attend has caused the parents to lose influence with their children. The children often reject the traditional customs and the teachings and discipline of their parents. The girls rebel against their parents by freely engaging in sex and the problem of illegitimate children result. This was not a problem of the past when these children were absorbed into the larger family units. However, today sometimes these children and their mothers are rejected.

The problem of early marriages among the young people is also a problem. The young get married without their parents knowledge. This often results in additional economic hardships on the parents because the young couples are immature and cannot find work to support themselves. In many cases these young couples split after a short period of time.

These are just a few of the problems and areas where changes have occurred in the role of the Navajo families with the coming of the whiteman and the change in the basic economy of the Navajo people. The picture is constantly changing.

Note to The Teacher:

The students should be asked to discuss their homes and the roles of the members of their families. Can they think of other areas where changes have occurred or areas where children have conflict because of their education and their parents traditional views and teachings?

ILLEGITIMACY: TRADITIONAL AND TODAY

Another related domestic problem which is very much in evidence is illegitimacy. This will be covered next. While this was never considered much of a problem in the past, it has recently become a time consuming and a headache for many people with the coming of state and BIA welfare assistance and also the advent of tribal advocates. The number of paternity cases pending in the Navajo Tribal Courts is only out numbered by criminal matters.

The word illegitimacy means to be born of a mother and father who are not legally married. It is a foreign concept to the Navajo people. Among the Anglo society and its laws, even if a child's father is known, he or she is still considered illegitimate. Among the Navajos, if a child is born out of wedlock, it is either said that the child's father is unknown or that the child "has just been stolen." The idea that the child "has just been stolen" apparently derives from the fact that sexual rights are considered property rights.

Because in the Navajo family, the clan of each member is matrilineal, the children are considered to belong more to the mother and her clan than to the father and his clan. What is meant by matrilineal is that the ancestral descent of any individual is traced through the mother, and not the father.

The clan is a group of relatives or a division of the Navajo Tribe who all claim the same ancestor.

Traditionally, the child born out of wedlock and the child's mother were absorbed into the extended family without any problems. The extended family usually includes grandparents, parents, and children. It may include two or more nuclear families based on kinship and coresidence, and everyone is expected to cooperate and contribute to the larger group with work, food, and other necessities. The child is then raised by the mother with the assistance of the rest of the extended family and is not treated any differently than other children in the family.

Sometimes the mother will tell who the father of her child is. If she does, her parents will go see this man and ask him to marry their daughter. If the man is already married or does not wish to marry their daughter, then this man is asked to pay, because of the earlier statement that

sexual rights are considered as property rights. The parents say that this man has ruined their daughter's life and reputation, and they want to be paid.

If the man is young, then the girl's parents will negotiate with the parents of the man in either arranging for payment plus a wedding, or just simply a payment for the taking of the sexual rights. The payment, if one is made, is usually in the form of livestock, household goods, or turquoise and silver jewelry. Occasionally, particularly in more recent cases, there is a cash payment.

In the event that the man decides to marry the girl, he will come to the home of the girl's parents and begin living there. His duties and responsibilities from then on are the same as in any ordinary Navajo custom marriage. He works there under the supervision of the girl's father until such time as he proves himself capable and responsible.

Traditionally, if payment was made to the girl or her parents, that was it. There were no further meetings and bargaining for additional payments or regular support.

From about 1960, the picture changed somewhat, because since that time many mothers have filed civil complaints in the Navajo Tribal Courts and also state courts to get support from the alleged father of their children. The complaints that these women file are called paternity suits. The purpose of these paternity suits is to allow these mothers to file a complaint against the alleged father, and to have the court determine whether the contentions of the mother are true. If the court decides in favor of the mother, it may order the father to pay a specific amount of money per month as support for the child, depending upon his financial situation. If the court decides against the mother, the complaint is dismissed.

There are no specific laws or regulations in the Navajo Tribal Code which permit the filing of paternity suits. However, there is a section in the Code of Federal Regulations, which the Navajo Tribal Council adopted, which allows the Tribal Courts to handle these suits (CFR T.25 Section 11.30). There is also a section in the Navajo Tribal Code which gives the Tribal Courts

the authority to handle all domestic problems of the Navajos.

The process of establishing paternity is considered a domestic problem. There is also one other section in the Navajo Tribal Code (T.17 Section 104) under the Law and Order section, which says that it is a misdemeanor for any Indian who fails for one reason or another to support his children, including those born out of marriage. However, this latter tribal statute would appear to be assuming that paternity has already been established.

If the paternity is established through the state courts, almost invariably the support payments are ordered to be paid to the clerk of the court. The clerk in turn sends the money to the mother, who is the legal guardian of the child.

The child can also get additional money for his education if, in the eyes of the court, the father makes enough money from his job and can afford to pay additional support.

Not too long ago, a court in another state ordered a father to pay for the education and support of a daughter who was not living according to the standards that her father wanted her to live by. When she moved in with some "hippies," her father became angry and refused to give her additional money for her support and education.

The Navajo Tribal Courts, in their orders which provide for child support, usually order that child support payments be made and continued until the child reaches the age of eighteen or becomes emancipated.

Emancipated just means that you are released from the authority of your parents or your legal guardian. If you are twenty years old and are still in high school, you would probably still be living with your parents; and they would be obligated to support you with necessities such as food, shelter, clothing, etc.

In contrast to the state courts, the Tribal Courts are very reluctant to permit the payment of child support through the clerk of the court. They say that this is too much paper-work for them, and there have been instances where money was lost, so they do not wish to become involved.

What is a legal guardian? A legal guardian is someone who has custody of the child and has the duty and authority to make decisions which affect the life and development of the child. It includes the right and duty to protect, train, and discipline the child, and the duty to provide him with food, clothing, shelter, education, and to take him to the hospital when necessary.

Sometimes the mother and the child are resented by the mother's parents and end up without economic support. Another important factor which has become quite evident in recent years is the Bureau of Indian Affairs and state welfare system. When these unwed mothers go to these sources for financial assistance in the form of Aid to Families with Dependent Children, grants, or general assistance, they are often told to file criminal and civil complaints against the alleged father of their children in the tribal and state courts and try to get support for their children, or to reimburse the state or the federal government. If they fail to do this, their grants or assistance are often discontinued or reduced.

INHERITANCE: CUSTOMARY AND ACCORDING TO TRIBAL CODE

Hosteen Tso was an old man. Since his wife died about five years ago, he had been living in the home of a granddaughter, who fed him and otherwise took care of him. He had five children, but they were all grown up and had families of their own and had moved away.

Hosteen Tso was not a wealthy man, but he owned two horses, a saddle, two bridles, twelve sheep, and some silver and turquoise jewelry. He also owned some ceremonial medicine bags.

Assuming that Hosteen Tso never said, nor left a statement or affidavit as to what he wanted done with his property which he left behind, let us review how the property which he left behind could be disposed of, first from a customary or traditional standpoint as far as it can be established, and, secondly, how the Navajo Tribal Courts would handle the situation following the Navajo Tribal Code. Both of these methods of disposing of property upon death of the owner is contained in the Navajo Tribal Code.

Before we go into the details of each method of solution, let us introduce some legal terms used by lawyers in these types of situations. The word used to describe the whole of one's property upon death, including debts, is ESTATE. A written legal statement of how a person wishes to dispose of his possessions upon death is called a WILL. Among the Navajos a customary will consists of verbal statements made in the presence of one or more witnesses concerning disposition of one's possessions.

As stated there are many variations in the customary or traditional method of distributing or disposing of a deceased person's property. Most of the more personal property of the deceased is buried with him, because this property is considered a part of the person, and most people would not want to keep any portion of it for fear of the deceased's evil spirits. Often-times the deceased is dressed in new clothes and relatives would buy jewelry which they would also put on him before burial. These properties normally include personal jewelry, clothing, and perhaps a saddle, bridle, and saddle blanket, if the deceased owned such. If the deceased had a favorite horse, the horse might be killed. In certain instances the night before the burial, the horse would be saddled

up and left tied up for the night. The following day, prior to the burial, the horse is shot. The saddle, saddle blanket, and bridle are then buried with the deceased.

Getting back to the estate of Hosteen Tso, the oldest son assumed the responsibility for distributing his estate. A person who takes on this job is called an ADMINISTRATOR of ESTATE. In tribal custom this role is voluntarily assumed by any member of the decedent's family or clan relatives, or else a person is chosen when the family and relatives get together sometime after the date of death. Another alternative is that everyone in the family and other close relatives get together and everyone gives their opinion about how the estate should be distributed and how debts, if any exists, should be paid.

In the case of Hosteen Tso, the oldest son decided that the granddaughter who cared for and fed her grandfather the last few years of his life should receive the twelve sheep. The oldest son wanted and received the ceremonial medicine bags because his father had taught him much about the background of the medicine bags and the significance they had in the life of the Navajos. Another son received the remaining horse and the bridle. To the three daughters went part of the turquoise and silver jewelry as token gifts from their father.

In some cases all members of the immediate family, close relatives, and friends will have a sort of a feast after the decedent is buried. This is done in appreciation for the help that these people may have contributed and also the people that come are expressing their appreciation, love, and esteem for the deceased.

If the deceased died in the home, then the home was abandoned and sometimes burned or else the deceased was buried in the home and the home was left to fall apart. The rest of the family would then move to another location and build a new home. Often-times when a person becomes very ill, and appeared very near death, he was removed from the home so he would not die in the home. Later a medicine man would perform a curing ceremony on the home so that the relatives could continue to live in it.

This latter practice is not followed very much anymore because it is not very practical. Today there are many, many more Navajos and the amount of land available for moving around has diminished substantially. Another factor which makes this practice not very practical is that today Navajos build bigger and better homes which they are not so eager to destroy or leave. Another factor is that more Navajos utilized the government medical facilities which are readily available today. More and more of the sick are taken to a hospital as soon as he or she becomes ill, instead of utilizing the services of a medicine man. If the sick die, they die in the hospital and not at home.

This essentially is how custom, as far as it can be established would treat an estate. But there are many variations of this, depending upon the age and position in the community of the deceased, whether male or female, and the type of property which is to be distributed, and also in which part of the vast Navajo Reservation you are in.

Let us now review the contents of the Navajo Tribal Code, and the practices of the Navajo Tribal Courts with respect to the distribution of an estate and the determination of heirs.

First of all, the laws and procedures of the Navajo Tribal Courts is not very well developed in this area. Actually the Navajo Tribal Code has only three specific sections on descent and distribution. In another area under grazing permits there is a section which sets forth the line of descent which should be followed when renewing a grazing permit belonging to a deceased person.

As far as the procedure to be followed in probating an estate is concerned, several attempts have been made to establish a sound set of rules which could be followed by anyone who wished to have an estate probated in the Navajo Tribal Courts. These attempts have all failed although the need for such a set of rules is definitely needed to make the process much clearer and easier for everyone concerned, including the Navajo tribal judges.

When a person dies, anyone such as a close relative of the deceased can apply to the Navajo tribal courts for appointment as the administrator of the estate of the deceased. Sometimes more than one person applies. If

this should happen, the court holds a hearing to determine which of the people who applied is the most qualified to do the best job possible. In any event notice is published to notify anyone who is interested in the estate that a certain person has applied for appointment as administrator of the decedent's estate. If there are no objections voiced by anyone the petition for appointment of administrator is granted and letters of administration are issued under oath. The letters of administration is the order signed by the judge appointing the petitioner the administrator.

After the administrator is appointed, it is his or her duty to obtain a complete inventory of the deceased's estate which would include all his personal property, including all his money, and also a complete list of all his debts, including the expenses which attended his death and burial. When a complete inventory has been made, the administrator is required to submit such to the tribal court.

Another thing which has to be determined is the complete list of all the possible heirs of the deceased and also their whereabouts. These people have to be notified by mail. As part of the process of notifying all interested parties such as creditors of the deceased, notices have to be posted at several conspicuous places in the community and adjoining communities where the deceased resided last. These places can be at chapter houses, trading posts, or at the agency headquarters. There is no specified length of time that these notices have to be posted. Normally they are posted for about three months.

Another method of notifying creditors is by publishing a notice in the Navajo Times or Dine-Baa-Hani notifying all heirs, claimants and creditors that a final settlement and distribution has been set and that if they wish to make any claim they are to be present at such hearing and also present their claim to the administrator of the estate and/or his or her legal representatives, such as an advocate or lawyer, this claim prior to the date set for the hearing.

On the day set for the hearing of the petition for final distribution and settlement and also determination of heirs everyone who claims to be an heir or who claims in any way to have a right to a portion of the estate gather at the designated district tribal court.

In the process of the hearing witnesses testify and claims are presented. The administrator in open court informs the judge of his efforts in the case and the nature and amount of the property belonging to the deceased. The administrator also sets forth the debts of the deceased as well as his or her expenses in administering the estate.

The final determination of the legal heirs and their rights to a specific portion of the estate rests with the judge.

Let us say for example that a man about thirty years old dies. If he was married, his wife and his children, if any, would be his sole heirs. This includes any children born out of wedlock. If he didn't have a wife but had children, the children would be his heirs.

If the man was single and his parents were still living, the parents would be the ones to inherit.

If the man wasn't married and didn't have any children or didn't have any surviving parents, the next heirs in line would be his brothers and sisters, if there are any and if they are alive.

From there on it would either be his grandparents, if any, or his aunts and uncles, if any. Otherwise the court determines what should be done with the remains of the estate.

As far as the debts of the estate go, the bills which attended the death of the deceased are paid first of all. These bills include medical expenses if the last days of the deceased were spent in a hospital, and the deceased was accessed medical expenses. Also, the cost of the casket, the clothing and other decoration such as turquoise jewelry which was buried with the deceased.

Since not very many of the Navajos die rich or with any relatively large sums of money available, usually the expenses are paid by the Social Security Administration or the Welfare Department of the Navajo Tribe. Also very seldom is there any medical expenses as the Navajos receive most of their medical services from the United States Public Health Service free of charge.

Quite a few Navajo surviving relatives borrow the money to pay for the burial expenses from Anglo traders in their area, and repay them slowly, or, the Social Security Administration will repay the trader or any individual, who assumed the expenses of the deceased's burial a specified amount.

As a result of the fact that very few Navajos die with any sum of money in their estate and with few or no debts there is usually nothing with which to pay a debt if any exist. In these situations it is usually the relatives who agree to pay the expenses and the debts.

Students and others should know that relatives and friends of the deceased are not obligated to pay for the debts of the deceased unless they had a legal part when the debts were incurred.

At the conclusion of the hearing the judge issues an order, containing the decision of the judge as far as the heirs are concerned, and also the distribution of the remains of the estate and also the payment of the burial expenses and any debts to creditors which in the mind of the judge is legal and should be paid.

The administrator of the estate is rquired to carry out the contents of the order. After he or she has completed this, he or she can apply to the Court to be discharged as the administrator. When this is granted, the whole process of probating the estate has been completed.

Another important aspect of this topic is the will. As stated above, a will is a legal statement or affidavit wherein is contained the wishes of the person who made the will regarding the distribution of his estate and the names and addresses of the people whom he wants to be his heirs. He or she also spells out that he wishes first of all to have the expenses surrounding his death to be paid.

The will must be made by the maker only if he or she is of sound mind and without duress or outside influence. The will must also be signed by two disinterested individuals.

When there is a will it must be presented to the court to prove its authenticity and validity. If there are any disputes, the witnesses can be summoned to appear and testify. If there are no disputes the contents of the will is carried out by the executor of the will or the administrator of the estate.

One thing which is not subject to tribal court jurisdiction is restricted property. This is usually the allotted land. Any decisions with respect to restricted property must be acted upon by the inheritance examiner. He is appointed by the Department of the Interior.

Navajo Inheritance Patterns: Random or Regular?

Mary Shepardson
University of Chicago

Blodwen Hammond*
Woodside, California

A study of traditional Navajo practices, based on our own field work and an examination of the literature, discloses a maze of disparate customs. This raises the questions: Are traditional Navajo inheritance practices random? Is this the explanation of an almost incredible flexibility? Or, if this is a case of institutionalized flexibility, how can a viable society tolerate so many alternatives?

Statements of ethnologists in the record are nothing if not contradictory. Thus Van Valkenburgh (1936:22) says: "No wills are made." Dyk (1947:185) says: "...wills are technically binding..." Reichard (1928:94) states that property is kept in the clan--"All the laws are based on inheritance in the maternal line"--but in the next paragraph cites a case in which a man's children (not, of course, in his clan) inherited. According to Dyk (1947:185), "After death...property, especially inherited property, then belongs to the clan, though the bulk of it presumably will go to the closest relatives, real brothers and sisters, parents, uncles and aunts...." We must point out that property which goes to a father has passed out of the clan. Kluckhohn and Leighton (1946:60) say:

> In former days Navajo inheritance was largely through the mother and her relatives, to whose clan every individual belonged as he does today. In some areas today the usual practice is for daughters to inherit from the mother, the sons from the father. In other localities, the bulk of all except "personal property" of both father

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and mother is divided before their death equally among sons and daughters, but land and livestock undivided at death remain within the extended family where the deceased was resident.

Statements from our own field notes are no less conflicting, or, as one informant summed it up, "Every family does it differently."

In this paper we propose to analyze the evidence in order to ascertain whether Navajo inheritance practices are fortuitous, or are governed by rules, laws, principles.

We shall take as the baseline for traditional Navajo social organization the period after the Conquest and the Treaty of 1868, when the traditional pastoral society, with its pre-Conquest war patterns suppressed, was re-established on a reservation. We shall describe this society in the present tense, fully realizing that certain elements which affect inheritance today were then absent. They include scarcity of land, population increase, government limitation of herds through the livestock permit system, wage labor, state welfare payments, large-scale irrigation in certain areas, formal education providing skills in non-traditional occupations, and Navajo Tribal Courts administering codified law. For data we must depend on reports of the early Navajo Agents, on statements of ethnologists, on cases from the literature, on our own field work in the unacculturated area of Navajo Mountain, and on instances of traditional claims, defenses, and reasoning which persist in the files of, and in cases actually observed in, the Navajo Tribal Courts.

Navajo Inheritance Practices

As we use the term, "property" refers to the network of rights and duties between persons in regard to a material or immaterial object, rather than to the owned object itself. There are two principal ways of disposing of a dead person's estate in Navajo society. One is the burial or destruction of objects of property, and the other is the transfer of property rights to inheritors.

The usual Navajo explanation for destruction of chattels on death is that the deceased will need good clothing, jewelry, weapons, and a horse for use in the afterworld. If the family withholds too many personal belongings, the ghost will return in search of his rights, whereas a lavish burial demonstrates the affection and esteem the deceased enjoyed among kinsmen. An old medicine man expressed it succinctly: "The things was his or hers. More was added out of love for dead one. Favorite horse killed so spirit of dead may ride." A second explanation is that intimate objects are an extension of the personality of the owner and share in the contamination of death.

There is a recognized procedure for the transfer of property rights through an informal meeting of kin, and there are approved methods for the revision of an inequitable distribution of property rights. A Navajo will frequently make a statement before death as to who shall inherit what. Such oral wills to be binding should be made in the presence of a witness. Sometimes a person, believing himself to be dying, will make gifts to those whom he wishes to have his personal property. One man told us: "Once when my father was very ill he gave me several strings of beads, but he recovered and I gave them back to him. When he died several years later they were not returned to me but went to the granddaughter who had been taking care of him."

In many cases preceding a death, a large number of relatives gather together for a curing ceremony. If the patient is a woman, traditionally her residence group will initiate the "sing." In the case of a man, his matrilineal relatives will come to help out in the curing ceremony. If there has been no sing to bring these matrilineal relatives together they will appear at, or shortly after, the funeral.

Once the burial rites are completed the group present will get down to the business of distributing the estate of the deceased. Some relative among them will be asked by the assembled group to act in the role of administrator. Anyone present may speak up with suggestions or make a request. Distribution may be made in terms of a verbal will, but more frequently the decisions are made ad hoc.

Principles of Patterning

A critical examination of individual cases reveals that decisions regarding the disposal of the estate are based on principles. There are beliefs of "ought" and "ought not;" norms are followed. Nevertheless, there is extreme flexibility in the patterning. Each specific situation calls for negotiation in the light of a number of variables, some of which are free, some linked, which combine and recombine. We suggest four main categories, each of which we subdivide for a total of at least 28 factors. The main categories are status of the deceased, types of rights, types of owned objects, and types of potential heirs. In order to puzzle out the intricacies of inheritance, we must first consider the network of rights and obligations existing between the deceased and certain kin groups and individual relatives, the types of rights exercised, and the objects over which they are exercised.

The category, status of the deceased, defines man or woman, young or old, single or married, with or without children, with or without parents.

Types of rights are (1) right of use, (2) right of disposal, (3) right of destruction. The "legitimacy" of these rights depends on the basis for the claim, how it was acquired, whether through pre-emption, through labor expended, through dependency, through personal skill, through gift, or through inheritance.

The category, owned object, includes (1) water resources, (2) grazing land, (3) fields, (4) houses, (5) livestock, which in turn is subdivided into sheep, horses, and cattle, (6) jewelry, clothing and artifacts, (7) ceremonial paraphernalia.

Each type of object is involved in a different complex of rights and obligations. Theoretically, water resources are available to everyone. However, by pre-emption, by settling near a spring, a residence group (usually an extended family) acquires a measure of vested interest in that spring. Other users are obliged to pass over the group's land to reach water, and this may give the occupying family the right to extend or withhold permission for use. Permission, however, should never be refused in cases of extreme necessity. The right lodges in the group and cannot be alienated by any individual member.

A residence group acquires rights to the use of land for grazing by pre-emption or inheritance. These rights are shared by all members of the extended family, but traditionally they do not outlast the actual occupation and use. Permission to utilize an area may be granted to others by the consensus of the extended family, but land is not rented or sold. A man's right to the use of grazing land in his wife's residence group is "contractual" (Adams 1963:100), based on marriage and terminating with the dissolution of that marriage. None of the property rights in land which are exercised by a co-operating member of a residence group can be alienated from the group. This is not only true of grazing land but of cleared fields and houses, even though the individual may have taken the initiative to bring the land under cultivation or to build the house.

Livestock carries a different complex of rights and duties. Each individual man, woman, and child possesses some domestic animals, which are earmarked to indicate ownership. A child is given livestock as the nucleus of a future herd, and as soon as he or she is old enough to share in the responsibility of herding, the boy or girl receives additional lambs and kids as an earned right. Since sheep and goats are herded in common by the residence group, members of that group must share in providing meat for consumption. If an individual barters his sheep, it should only be with the consent of the residence group. Just as a man retains a vested interest in the land of his matrilineage, so does the family of origin retain a vested interest in his flock. His maternal relatives have helped him to acquire his animals, and frequently he leaves them in the family herd long after he has married. These relatives contribute to the bride-price offered to the family of his bride, and they assist in the expense and labor required to hold the costly curing ceremonies for son, brother, or nephew.

Horses are not co-operatively herded, but range freely. They are closely identified with a person and serve as an item of prestige. Rights to horses resemble those involved in "personal property" and include rights of use, of disposal, and of destruction. The killing of a horse at the grave is an obligation.

Jewelry, clothing, and artifacts are made by the owner, or secured through barter, gift, and inheritance. They are subject to all three types of rights. Some of these very personal objects are buried with the dead.

Ceremonial paraphernalia, principally medicine bags, may be acquired through one's own efforts or through barter, gift, or inheritance. They are subject to the right of use and the right of disposal, but not the right of destruction. They should be conveyed only to a person who knows how to use them in the proper ceremonies.

Types of potential heirs consist of (1) the residence group and (2) individual kinsmen selected for these special attributes: (a) members of the decedent's matrilineage, (b) dependents and/or trustees for dependents, (c) persons who cared for the deceased before his death, (d) those present at the distribution of the estate, (e) those who know how to care for the objects of property, and (f) those with greater need.

The Residence Group. This is the membership of the camp of the nuclear or extended family in which the deceased held residence at the time of death. The core of kinsmen in an extended family residence group many correspond to the dead person's matrilineage. This is particularly apt to be true in the case of a woman, since the preferred, but by no means exclusive, form of residence is matrilocal. The residence group as such retains use rights to water resources, grazing land, and fields on the death of any of its members. No other social group in Navajo society inherits as a unit.

Members of the Deceased's Matrilineage. The matrilineage does not inherit as a group. However, inheritance in a strictly kinship idiom operates within the matrilineage. This means that a man's relatives in the maternal line, his own siblings, mother, mother's sisters and brothers, and sisters' children, take precedence over wife and own children. For a woman, her own children and other relatives in the maternal line take precedence over her spouse.

Two early accounts of the division of estates, when the influence of non-Navajo practices was minimal, come from the life stories recorded by Walter Dyk. The son of Old Man Hat describes (Dyk 1938:279-280) the division of his father's estate some time before 1880. The old man's

brother took charge of the division. First, he separated out 500 sheep and fourteen horses which belonged to Left Handed and his mother, the son and wife of the deceased. Next, 900 sheep were divided among Old Man Hat's clan relatives, twenty, fifty, or a hundred to different ones. Each clan relative present received one or two horses and later received one or two head of cattle. The son was given a token inheritance of two horses--first choice from his father's herd.

Old Mexican describes (Dyk 1947:60) the division of his brother-in-law Quiver's estate some time between 1893 and 1901. Quiver's mother's brother managed the distribution. The horses were divided among three of the dead man's brothers. The sheep were separated into three portions, one each for two sisters and the uncle. Token gifts of ten sheep were given to Quiver's widow, and some "little things, not sheep or cattle" to his slave. The dead man's older sister then decided that their uncle deserved a larger share since he had taken more interest in her brother, in helping to take care of him, than all the rest. She insisted that he take a sorrel mule and a roan horse.

At a later period, 1924, Reichard records a case where the widow's threat of taking her husband's estate to the Indian Court induced the dead man's family to give her $100 and some horses. Reichard (1928:95) comments, "This is much more than is customary for the Navajo to give a widow."

Dependents and Trustees. Small children in any society are dependent for survival on sustenance provided by an adult. However, in Navajo society this does not include complete economic support since children are partially self-supporting. As previously noted, from the time of his birth a Navajo child is provided with a few head of livestock, which increase by natural means and are added to as the child grows and earns rights to a greater share of the family herd through contribution of labor. A Navajo child, too, benefits from the traditional idea of ownership of land. That is, he has rights to his family-held land, which cannot be alienated; as long as he remains a part of the residence group, he continues to receive a fair share of the benefits of the land used by that group.

When the mother of young children dies, the children are in most cases "adopted" by someone in the same camp--sometimes by the mother's parents, sometimes by a mother's sister, not infrequently by an own sister if there is one old enough to assume responsibility for her younger siblings. The property of the dead woman usually remains within her residential group; the person who is to assume responsibility for the children acts as trustee and holds her belongings until they reach an age to take over for themselves. A problem with absentee trusteeship is that herds under such care often fail to thrive. For example, in a modern court case which paralliels cases in the literature, a man living with his wife's extended family was named trustee for his deceased sister's herd of 400 sheep; fifteen years later her children petitioned for a distribution of their inheritance but were told, "There are no sheep to divide; the coyotes got them all."

When the father of young children dies, there is no legal or moral obligation that his estate should go to his wife and/or children. Nominal sums are usually given to them, but for reasons of affection rather than to provide for their welfare. Members of the father's matrilineage, probable heirs to the majority of his estate, are aware that his children were "born for" their clan and are entitled to help from them if needed.

Persons Who Cared for the Deceased before Death. When an elderly person, man or woman, dies, the primary claimant to his estate may be the person or persons who took care of him during the last years of his life. With a woman this is typically a member, or members, of her matrilineage, probably a daughter or a granddaughter. We have one case in which the principal heir was a great granddaughter.

An elderly woman, especially if she is a widow, may relinquish her interest in a field, or fields, in favor of sons or daughters who have moved out of her residential group, if they are the ones who are actually working the land. She may retain use rights to grazing land and state that she wants the particular relative with whom she is living, who is herding her sheep, cooking her food, and in general administering to her needs, to receive her sheep and grazing land when she dies. Certain pieces of jewelry may also be given away in anticipation of death, and a verbal will may direct that "whoever is taking care of me when I die" is to inherit the remainder.

An elderly man, likewise, is apt to leave a lion's share of his estate to whoever takes care of him in his declining years. By the time a man is very old it is unlikely that his family of origin is still extant. Therefore, even if widowed, he may continue to live in the residential group of his affines, staying on as the charge of one or more of his children or grandchildren. Those who assume the burden of caring for him and herding his sheep thereby establish a paramount claim to his belongings.

Those Present at the Distribution of the Estate. "I was in the army and stationed on Guam when my grandfather died, so I got nothing," we were told by an informant. Two women of our acquaintance hastened some thirty miles to the home of their mother's brother when informed that he had dropped dead. They were told by his widow that they would be given certain pieces of jewelry "so you will have something to remember your uncle by." A brother of the deceased who also made the trip was promised nothing. "He didn't ask for anyting," we were told. No gifts were promised to the other nieces and nephews of the dead man or to a surviving sister who were not present.

It is our opinion that anyone present at the distribution who asks for a share will be given something, but we are equally certain that no one will make a request unless he can justify his claim on solid grounds. The ubiquitous "clan relative" who shares so largely in every man's estate always turns out to be not just any member of the deceased's clan but rather a member of his matrilineage.

Those Who Know How to Take Care of the Objects of Property. Emphasis is placed on knowledge of how to take care of livestock, fields, and springs. Again and again informants answer a question about inheritance practices with an introductory statement: "Well, of course, things will go to those who know how to take care of them. Nothing will be left to a person who would neglect or destroy it."

Ceremonial paraphernalia are properly left only to a relative who has learned the appropriate "sing," a man's own son or, as second choice, his brother or his sister's son. An old medicine man at Navajo Mountain told us:

> A medicine bag should be handed down from father to son. Just as I got my bag from my father, who got it from his father--and this goes back at least four times--I should hand it on to my son. If my son does not become a singer then it will go to whichever one of my sister's sons becomes a learner.

Lacking such qualified heirs, the medicine bag may be divided, or given to matrikin who will have the privilege of selling it as a whole or in parts. Medicine bags are highly valued. For example, in one transaction, a Chinle medicine man, willing his bag to his own son, told how he had acquired it through barter from another medicine man. The payments were as follows: one horse, fully equipped with saddle, blanket, and bridle; one bare horse; twenty sheep; one buckskin; one blanket; some beads; three strings with turquoise attached; and two more horses.

Those with Greater Need. Everything else being equal, those with greater need come out better than those who are already well-off. The son of Old Man Hat (Dyk 1938:279-280) quotes his father's brother, who acted as administrator of the old man's estate, as saying in effect: "I won't take anything. I don't need it. However, if you people insist that I should have something, then I will take this steer."

A modern example, illustrating the persistence of this value, is provided by a Navajo Mountain informant, a high school graduate home for a visit:

> Who will inherit when Mom dies? Well, we will just have to wait until that time comes and see how things are then. Mom has told us how she would like things handled. She wants everything to go to the ones of her children who stay here with her. My oldest brother and I, being educated, will probably have jobs away from home, and we will not need to inherit. Our feelings will not be hurt if we do not share--we will think it is right that everything here at Navajo Mountain should be given to those sisters and brothers who stay with Mom, who help take care of the herd and work in the fields. They are the ones who will need it.

REDRESS

A legitimate heir to an estate, whether present or absent at the distribution, who feels that he has not received an equitable share, may through persistence, and with the weight of public opinion on his side, bring about a redistribution. A middle-aged man told us: "When my father died he left almost everything he had to my sister's daughter who was taking care of him. About a year later she gave me a cow and a horse." We have several other cases in which we were told, "I could have gotten more," or, "I could have gotten something if I had asked." "Instead" is probably a more accurate verb.

A recent formal court case illustrates how, even today, the old beliefs in the right way to leave one's estate persist, and how traditional beliefs may serve to abrogate a formal will. Hosteen Tso, of Chinle, asked the local Catholic Father to write out a will according to the terms he would dictate. The will was duly witnessed by two prominent Chinle Navajos and the Catholic priest, who acted as amanuensis. It was duly affixed with the thumbprint of Hosteen Tso. He left to a certain daughter his sheep permit, his home, his farm, and his machines. His cattle he divided among two other daughters, a granddaughter, and a son. He named specifically the jewelry he wished to have buried with him, and designated the heirs to the remainder. A saddle blanket was left to a nephew. He concluded with the request that "The remaining cash should go to the person or persons caring for me at death." An addendum and corrigendum instructed the administrator to disregard one harness mentioned earlier, because in the meantime it had worn out, and to substitute a newer harness. He further clarified: "It is my intention that my stepson can claim 'any and all remaining stock' ONLY if it can be shown that he has kept his agreement and promise just made to me to see that my herd is cared for. Otherwise I will it to my son."

Hosteen Tso died five years after he made his will. The deceased's brother immediately suggested to the priest that interested parties congregate at his hogan for a discussion concerning the distribution of the dead man's estate. However, the instrument was filed for probate. Some eight days later two daughters by his first marriage, who were not willed any money, petitioned the Court for a hearing. They based their

claim on the fact that they had visited their father as often as they could, had taken him groceries, cleaned his house, done his laundry, and attended him during illnesses. Two half brothers, stepsons of the deceased, had also tendered loving care to the old man while he was alive, had hauled wood and water, given him transportation on shopping trips, kept his house in good repair, and rounded up and branded his cattle. They and their half sisters had made all funeral arrangements, and the men had readied and dressed the body. The petition concluded: "We feel that even though our father neglected us as small children we helped him and were more concerned about him and his welfare than the other relatives and should be entitled to an equal share of his money." Thus, instead of making their claim on the modern basis that all children have an equal right to inherit from their father, these daughters based their claim on a traditional right.

After many court sessions the case was closed with a distribution of equal shares of money to thirteen heirs, which means that at least half a dozen individuals not mentioned in the will were able to talk their way into a share of the old man's estate. A final traditional note is shown in the court records: "The heirs of the will request that Tso Binaai, the only brother of the decedent, be allowed some money according to Tribal Custom." A notation indicates that this request was granted by the Court.

The general result of the flexibility of Navajo inheritance patterns is to disperse, rather than to preserve intact, a decedent's estate. The dispersal of wealth within a wide network of kin relations is institutionalized in Navajo society through the distribution of gifts, hospitality, the bride-price, and contributions to sings. Despite the fact that an element of prestige attaches to the acquisition of wealth, too great wealth is dangerous. Rich individuals risk becoming the targets of jealousy and hence of witchcraft accusations. Prestige positions go to the wise person endowed with skill, generosity, and the willingness to co-operate, rather than to the possessor of an abundance of material goods. The practice of distributing small personal belongings as tokens of affection furthers the tendency to disperse an estate.

Some societal functions which demand rigid rules of inheritance do not obtain in the Navajo way of life. There is, for example, no need to preserve a landed estate. The traditional Navajo pastoralist has little incentive to establish a fixed, long-term residence. The marginal condition of the soil, coupled with scarcity of water, means that there is usually no landed estate worth preserving; given the low density of population, plenty of land is available for the taking. The portion of the traditional subsistence living which is derived from agriculture is seasonal, undependable, and small, as compared to the income from herding. Shared use rights in land do not offer the Navajo prestige, rental income, or, as in feudal society, control over the labor of others.

Since there are no large commercial or industrial enterprises, there is no need for the amassing of capital for investment. Natural increase is the principal form of accumulation. The technology does not demand capital outlay for tools, for purchasing land, for rent, or for taxes.

The sole corporate, property-holding group in Navajo society is the extended family or residence group. There is a tendency to preserve through inheritance the use rights to water resources, grazing land, and fields which are vested in the group. Any resident, co-operating member of the group shares in these use rights so long as the group holds together and uses the resources. From one point of view we can say that the residence group inherits the decedent's share in the family use rights, or we can say that the individual's rights are extinguished with death. There is no larger division which can be considered to inherit any rights as a group.

Finally, provision for dependents is not the prime function of inheritance in Navajo society, since each man, woman, and child owns livestock in his own name and shares in the use rights to land and water vested in his residence group.

Conclusion

We submit that traditional inheritance practices among Navajos are not random, but consist rather of a number of alternatives, a series of combinations and

recombinations, of compounded flexibility. The inheritance procedure, the on-the-spot negotiation according to recognized principles, conforms to the Navajo ideal of freedom of behavior. Both individual and group needs are satisfied by these flexible but controlled customs.

LAND

The Navajo people live on several different types of land, but the majority of the Navajos live on the Navajo Indian Reservation in Arizona, New Mexico, and Utah. The Navajo Reservation was originally established by the terms of the Treaty of 1868 between the United States Government and the Navajos who had been forced to march to a concentration camp called Bosque Redondo, near Fort Sumner. The size of the Reservation was substantially smaller in size than the area which the Navajos occupied prior to their so called "defeat", and forced relocation to Bosque Redondo.

However, there were a few bands of Navajos who hid out in isolated and remote areas of the present day Reservation, and continued to live in these areas following the return of the few thousands of Navajos from Bosque Redondo. As time went along these Off-Reservation bands grew, which caused several Presidents of the United States and the Congress to add on, by Executive Orders and Acts of Congress, more land to the original reservation until it grew to its present-day size. These additions include the satellite reservations of Canoncito, Alamo, and Ramah, all of which are located in Northwestern New Mexico.

A series of Executive Orders beginning in 1907 at first included a large portion of the present-day Checkerboard area, in the vicinity of Crownpoint, Chaco, and Hosta Butte, as part of the Navajo Reservation, but later most of the lands in this area was returned to their former status.

Other major types of land on which Navajos live today, and over which the Navajo Tribe and the federal government exercise jurisdiction are as follows: allotted lands (individually owned), Navajo tribal trust land, Navajo tribal fee land, United States Government land, lands leased by the Navajo Tribe, and also tribal ranches.

An allotted land is a piece of land usually containing 160 acres or a quarter section which a qualified Indian applied for, and obtained a right to, and in some instances eventual title to, in accordance with the General Allotment Act of 1887. The first thing that an applicant has to do is prove to the Bureau of Indian

Affairs that he is eligible. Upon receiving a Certificate of Eligibility from the Bureau of Indian Affairs, he can take the Certificate, and a Petition to the proper Land Office of the Bureau of Land Management, and also an application for an Indian Allotment. These public lands for which individuals applied were in the majority of cases outside of national forests. If the public land was within a national forest, then another application was necessary to the forest supervisor.

There are several other steps taken to make sure that the land is suitable to be classified for an Indian Allotment. If the public land is classified for allotment the applicant is given a Certificate of Allotment. The applicant is then given two years in which to prove that he really is interested and serious, and must therefore settle on the land, and begin using it, and making improvements upon the land. If he fulfills this requirement satisfactorily he is next given a trust patent for the land. This means that the federal government will hold the land in trust for the allottee. A fee patent may later be given to the allottee upon approval of the Bureau of Indian Affairs. A fee patent is similar to the trust patent in that the United States holds the land in trust for the individual subject to Federal restrictions against alienation or encumbrance.

The allotment is held in trust for the allottee for at least 25 years. At the end of that period of time the allottee may be given a fee simple. A fee simple means that the allottee owns the piece of land outright to do with as he pleases.

However, the Secretary of the Interior can extend the trust period until such time as the Department of Interior determines that the allottee(s) is "capable and competent of managing his or her own affairs." This means that the trust patent can be extended indefinitely. The reasoning behind this is that many Indian allottees in parts of the United States lost or sold their allotments after they were given a fee simple. Because of this the President decided that the allotments should continue to be held in trust for a longer period of time.

The other types of land are described as follows:

Navajo tribal trust land is land which is held in trust for the Navajo Tribe, subject to Federal restrictions against alienation or encumbrance. This means that the Navajo Tribe cannot sell or give away this type of land without the approval of the Federal Government. This also includes tribal land which are assigned to individuals for use.

Navajo tribal fee simple land is land owned outright by the Navajo Tribe. The Navajo Tribe can do anything she wants with it.

Government land is land acquired or reserved by the United States for the Bureau of Indian Affairs. These types of land are leased out to individuals if the land is not being used by the Bureau of Indian Affairs. This also includes land placed under the Bureau of Indian Affairs.

And finally the Navajo tribal leased lands. These include unreserved public domain land leased to the Navajo Tribe.

There are also Navajo Tribal Ranches. These were purchased from private ranchers. These large ranches are leased to individual stockmen.

Up until around 1940, there was plenty of land for any Navajo who had livestock to graze or who wanted to operate a small farm. Before that time the Navajos wandered around with their livestock over a certain area depending upon the time of the year, the forage and the availability of water.

In 1941, the Bureau of Land Management began issuing grazing permits to livestock owners in the Eastern Navajo Agency. A grazing permit is a piece of paper which shows the name(s) of the permittee(s) and the number of livestock units of sheep, goats, horses or cattle that they can graze in a specified area. At that time all of the land in the Eastern Navajo Agency was under the jurisdiction of the Bureau of Land Management and they were the people who managed the range lands and the issuance of grazing permits. The grazing permit is revocable.

As far as the Navajo Reservation is concerned, Title 25 of the Code of Federal Regulations authorizes the Commissioner of Indian Affairs to regulate the grazing of livestock on the Reservation. The conditions of said grazing of livestock are spelled out under that title. The Navajo Reservation is divided into land management grazing districts. These districts are further divided into range units. The grazing capacity on the Navajo Reservation is determined according to the size of the districts, the forage and the water available.

To aid the Superintendents of the four agencies on the Navajo Reservation there are District Grazing Committees and also a Central Grazing Committee. The number of Grazing Committee members for any District depends upon the number of councilmen from that District. There is one member for each councilman. There are at least 15 Districts within the Navajo Indian Reservation excluding District 6, which is the Hopi Reservation, and also that portion of District 15 which extends beyond the eastern border of the Reservation in New Mexico.

The main duties and responsibilities of the Grazing Committees are spelled out in the Navajo Tribal Code under Title 3, Section 478.

These duties and responsibilities include dipping, spraying and dusting of sheep, goats, cattle and also branding activities. They also engage in disease control programs, and hold meetings and hearings to explain and complete transfers and subletting of grazing permits; they are also supposed to enforce the Navajo Grazing Regulations on the Navajo Reservation although they do not always do this; they are also supposed to serve as mediators in resolving disputes over use areas and other livestock problems between individuals and groups within their Districts.

Instead of serving as mediators, they more often than not serve as a judge or as a jury. They are suppose to hear both sides and try to get the parties to agree to a mutual settlement but what actually takes place cannot be properly labeled as mediation.

In many instances the members of the Grazing Committees are related to one or both of the parties to a dispute. In these instances they usually take the side of a close relative or a friend as the case might be regardless

of what the evidence might show or what the witnesses might say.

The biggest problems and drawbacks that the Grazing Committee on the Navajo Reservation and the Land Boards and Joint-Agency Land Board for the Off-Reservation (Checkerboard) have is that there are all these regulations but no well established set of procedures for their enforcement or for handling of various grazing disputes that arise.

The Indian Bill of Rights which was passed by the Congress and signed into law by the President of the United States in 1968 extended to the Indians of this country who were exercising powers of self-government the same rights, freedom, and responsibilities which the rest of the citizens of the United States had under the United States Constitution and the Bill of Rights.

The most important part of the Indian Bill of Rights which is applicable to Land Board and Grazing Committee hearings is the "due process" clause.

The statute says that "no Indian tribe in exercising powers of self-government shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law."

This statute means that the various Land Boards and Grazing Committees must handle all land disputes which are brought before them according to the ideals of fair play. Parties to a dispute should be permitted to be represented by someone such as an attorney or tribal court advocate. They should be permitted to bring witnesses and be permitted to face and cross-examine witnesses for the other side. The members of the committees or boards should also be required to go out in the field to make investigations. However, none of this is practiced by these Grazing Committees or Land Boards.

Tribal court advocates have represented many clients before these committees and boards. Some of the members are very hostile towards these advocates. Sometimes they say, "What are you doing here? We know what we are doing and we don't need anybody else meddling in our business."

During the hearing they bring in only one person at a time and then they make them leave as soon as they present their testimony. The decisions are made behind closed doors and in some instances several days after the hearing. Most of the time only one party is notified and the boards or committees make a decision only on the basis of the testimony of one witness.

The Checkerboard area has its own set of regulations which is called the Off-Reservation Grazing Code. These regulations were promulgated after the Navajo Tribe, the Bureau of Land Management and the Bureau of Indian Affairs all approved and signed the Cooperative Agreement for the Administration of the Checkerboard Area during the summer of 1966.

The enforcement of the Code is the responsibility of the Off-Reservation District Land Boards with the assistance of the Crownpoint Tribal Range and Livestock Office and also the Superintendent of the Eastern Navajo Agency.

The regulations can be found at Title 3, Navajo Tribal Code, beginning with Section 501 and ending with Section 656.

The duties and responsibilities of the Land Boards are generally the same as that of the Distric Grazing Committees as mentioned above. The main difference betwen the work of the Grazing Committees and the Land Boards is the type of land with which they have to work. While the Grazing Committees have only the Reservation lands to work with, the Off-Reservation Land Boards have to work with at least five different types of land. These are, as mentioned earlier, allotted lands, tribal trust land, tribal fee simple, U.S. Government land, and lands leased by the Navajo Tribe.

There is also a Joint-Agency Land Board. This is a Board which consists of the combined membership of all the District Land Boards in the Off-Reservation area. Their primary duties is to hear unresolved disputes from the lower Land Boards. In other words they fulfill the duties of an appeal body. They review and also listen to testimonies which will help them make a decision. The problems which the Grazing Committees and Land Boards have are also here. There is no concept of due process evident in the hearings that they have.

If one wishes to make an appeal from the Joint-Agency Land Board, he or she can do so to the Resources Committee. If one of the parties is again dissatisfied with the decision of the Resources Committee, they can appeal to the tribal courts. In each of these appeals, the appeal must be made within thirty days after receipt of the written decision from the body from which an appeal is being sought.

The Resources Committee is comprised of members of the Navajo Tribal Council. The members of this committee hear appeals both from the Reservation Grazing Committees and the Off-Reservation Land Boards and the Joint-Agency Land Board.

At this time the Resources Committee is faced with a trememdous backlog of appeals from throughout Navajo land. As far as can be determined the Resources Committee is not doing very much to solve any of these problems. One tribal court advocate wrote several letters to the Chairman of the Resources Committee but never received a reply on a land problem which had been in existence for many years. This is very typical of how these land problems are treated by the people who are suppose to resolve these problems.

INTERVIEW WITH JEANETTE SAUNDERS

Mariano Lake, New Mexico

LJ. How did people discuss the taking away of sexual rights a long time ago?

JS. They would just question both sides--the one who took away the sexual rights and the one from whom this sexual right was taken. These two parties, both the woman and the man and the person from whom the sexual right was taken would tell on each other. They would say, "This is the way we saw each other." This is the way they would tell about it.

And then there are several people who discuss it, not just chapter officers. They discuss it and decide whatever they think should be done. And if the man from whom the sexual right was taken says, "I do not want this woman," they would still try to get them back together. They never used to set them apart. And if it is the man who took this sexual right away, then he would say, "I was told to pay so many sheep or horses." And some used to do that. And the woman also. Like this certain woman, she paid twenty-one sheep mixed with goats, just the old goats, and the old sheep, and so we got them together for her, as we were one people [one clan]. She went around among us, and we got them together for her, and we paid for her to the woman from whom she had taken away this man.[1] This is the way they used to fix these matters up.

LJ. These people that used to hear these matters--were they always the same people?

JS. No. Different. They used to pick themselves. Only those people who used to discuss things well, these were the only ones. When some of them did not come, they would pick others who they felt were responsible and could speak up well. They would discuss this matter with them. This old man (Young Jeff) used to handle a lot of these problems.

LJ. What if the man from whom the sexual right was taken really did not want the woman? What would happen then?

JS. In that case, they do not set them apart. If they do not return to each other, then it's they who separate themselves. When they really did not want each other any more, then they did not try to force them to return to each other. Only the one from whom the sexual right was taken was paid, because he had been wronged. And he would like it and he would leave.

LJ. We read that in some of these cases, they used to cut off the woman's ears. What about that?

JS. You mean a long time ago?

LJ. I don't know just how many years back.

JS. A long time ago, my grandmother and my grandmother's younger sister were making moonshine, and they were drinking. They said this is what they used to do. This is what the woman was doing, and the man was jealous. And he used to also catch her now and then, so she had her ears cutoff right here. They say the man with whom she was living did this. I saw this woman. She was my grandmother's younger sister. And then she went and married another man, an older man. And that man cut off her nose. This portion of the nose that was sticking out was gone. You could just see the hole. From that time on they used to call her "woman without a nose." This woman was very ornery. This is the only one that I know that was like that. That's the only one I've seen like that, and my grandmother used to tell me about it. She used to tell me that this is what this woman was doing and that was the reason why this happened to her.

LJ. What about those men that used to have several wives. How was that?

JS. Well, my father was like that. He went through several of them. But I don't think they ever fought. He went through several who were from one family, so he used to have a lot of kids. We used to have a lot of older sisters and brothers, but then this was only among the Kiyaa'aani Clan. And then I don't know how he got together with my mother. And then from there on, after he got together with my mother, and then my two older sisters, he used to have all three of them. And then the youngest one just got out of the way.

LJ. What about the couples that separated?

JS. They used to just leave.

LJ. It didn't used to be discussed?

JS. At that time, there was no discussion. Back about forty years ago there was none. They used to say, "So-and-so is married over there again." And that was it. But if they thought quite highly of themselves, then they used to say that several of them would go after the woman. My mother used to tell me this. They used to say they used to come after her at home on horseback, and then the woman would get scared and she wouldn't come out, so the people would just leave on horseback. Some of them used to fight. They used to really fight.[3]

LJ. Today, when people talk about separating, it goes into the court. And they talk about this thing they call community property. They say, "Let's separate this property which this man and this woman got while they were living together." What about back then?

JS. There was none at that time. He used to just leave, and even the ones that committed adultery, and if he married again, even then, they would demand payment from the relatives of the woman who took away the sexual rights, like if two people get into a fight and one of them gets hurt.[4]

The chapter officers used to resolve these problems, but before that time it was you and the family and the other family, they used to just tell each other about the fight that took place. They used to fix these up Themselves. Like my mother, he got into a fight with this man, right out in the open. It was never discussed. It just happened. That was it.

LJ. They fought, and nothing more was done?

JS. Yes. Nothing more was done, even though Naat'aanii Yazhi was still here in Crownpoint.[5]

LJ. This Naat'aanii Yazhi, was he a judge himself?

JS. No. He was not a judge. He was a superintendent.

LJ. Even then he used to do some of this type of work?

JS. Yes. He used to really work on this. He used to straighten out a lot of things, whatever it was that you told him. Some people used to hurt one another's cattle. Like my father, he used to be a ringleader in that. Like when some cattle used to come this way, he used to prepare a long stick and since he was a silversmith, he used to sharpen a piece of metal and tie it to the piece of wood. And he used to put this thing right in the thigh and push them back.[6] But they never really got after him about it. It just used to happen and there. They used to tell on some of them over there, but they never used to bother them. And no policemen would come after them. There were only two or three policemen then. They used to only ride horseback then. They couldn't go places very fast. Sometimes they used to spend a couple of days going after them.

LJ. Did they used to take them back to Crownpoint in cases like this?

JS. Yes.

LJ. And they used to place them in jail?

JS. Yes. They used to throw them in. I remember they said that a couple of policemen were killed near San Antone.

LJ. Yes. The policeman was killed while he was still bringing him back.

JS. I do not know exactly how it happened. I guess he was taking him back and there was another policeman living at San Antone, and they were going to spend the night there. I guess the man he was bringing in wasn't even suspected of anything. He used to be a brother of Young Jeff, a younger brother. I guess the policeman took off his guns and hung them up. During the night sometime Young Jeff's brother got up and took the policeman's guns and used them to kill both of the policemen. So he took flight to the home of his children. And there he got ahold of a horse. They took this one naat'aanii--I don't remember what his name was--over there. In those days they used to travel around in those small buggies with just one horse. They say that they took one of these

over there for him but he wasn't there. He took off on foot and went across to Thoreau. And there they sent Paddy after him, because they said he couldn't miss. And Young Jeff's brother was using the guns and ammunition of the policemen he killed. And they matched him with Paddy, and Paddy killed him. I guess he ran out of ammunition and just came out into the open for him. And Paddy and Young Jeff used to exchange arguments now and then and that was the only price, and they used to really hate each other. But there was never any payment made, even though the man who was killed had two sons and a wife. And his wife is still alive today. I don't know, maybe he would have been put in jail if he hadn't run away.[7]

LJ. Did a lot of people used to kill each other a long time ago?

JS. I don't know that. I was grown up somewhat when they told me about that.

LJ. I'm also told that if a man came to visit me and if I told him that I had a horse and if I told him that it was a good horse and asked him to ride it, but before he rode very far the horse started bucking with him and he fell off and broke a leg, I would have to pay this man so much and I would also have to pay the medicine man who could perform a sing for him.

JS. They used to say that you would have to contract for a medicine man and you would also have to give him that horse. That I know, and they used to tell about it like that. If the horse which injured him was his own, then he would have to give it to the medicine man. This is what they used to say. If it was not his horse, then it would become his, with everything that was on it.

LJ. And the man who owned the horse?

JS. He would go home on foot.

LJ. And on top of that, obtain a medicine man for him.

JS. He would have to obtain a medicine man for him. That I know about.[8]

LJ. What happened if your cattle or sheep went into another man's garden?

JS. They used to also pay in those cases. Quite a ways back one cornstalk used to cost $.25 if it was small. And if it was a little bigger, than that, then it was $.75. This much I heard about over there. Like if it was some cattle, I don't know how they used to determine how much was eaten in figuring out the payment. In this way they used to pay.[9]

LJ. What about when people complained about other people herding into their area?

JS. A while back, around forty years ago, people never used to say, "This much is mine." Because my father used to move around all this area all the way up to where they have uranium mines now. He used to move around in this whole area anywhere he wanted to, all the way down to Dalton Pass. And they never used to say, "That's my land. That has been given to me." It has just been recently since they started mining uranium. Then people remembered where their land was, and also the land that had been given to us. Because of this, we do not ever allow other horses to approach us. But now, there's a lot of livestock over there. But even to herd them away or herd them, there's always trouble and lies from the other side. There's too much trouble. They always accuse you of herding the horses in this way or the cattle. But some still chase these livestock[10] around and herd them. But now, they always say "Crownpoint. The Land Board is meeting over there."

LJ. Do you think the Land Board is doing any good?

JS. I don't think so. It's really not right. It doesn't seem proper to me because one time there was a lot of trouble over that way. They never did anything about it, and then, also, some fences have been cut over there. They cut one person's fence over there in several different places. And then over there, they cut another person's fence in forty-two different places, and they have made several trips for it when they hear that the Land Board is meeting, to no avail, and also to BLO. [Branch of Land Operations].[11] And the victim says they are really trying, without any success, and he also says he went to see Senator Tom Lee. Well, he says Tom told him that since they are not going to straighten it out

for him, he should file a complaint over there [at Tribal Court]. And he says he did file a complaint, because of that, and the other person whose fence was cut also filed a complaint over there. And they say that it will be heard soon.

The last time it happened at night, and it seems like we are about to kill one another for what happens to be no reason at all. They say that all of a sudden they really heard some noise, like somebody chopping some fences. So they drove over there and saw a pick-up they recognized parked over there. And the people that were doing this took off right across the fence on foot.

These Land Board members don't really discuss these land problems for us properly. And they never go out to these places where the people are having the trouble. They do not even bother to take care of the trespass problems. BLO writes letters to these people and they only say, "This is what you're doing, so don't do it any more."[12] Just like what I'm talking about. One of these days somebody's going to really get hurt, and then they will be over there.

And when they give a piece of land to somebody, they do not survey it carefully, so that people are running their fences in the wrong places. A lot of people are arguing with one another about these things. It is like that across over there. They are fencing in a large area and you have to go way around, and people are not the way they used to be.[13] Because of this, some people when drunk do not think properly and some might hurt one another quite seriously while drinking. One of the people whose fence was damaged says he filed his complaint because he was worried about these things. It's really the younger generation that you have to think about. I have four grandchildren who are grown up, but they do not say anything, even though we may be having trouble with some people. They don't say anything. But some of these other people seem to just let their children loose and they get involved. He said it was his concern for these people that led him to file his complaint.

LJ. When people are having disputes like this, such as about herding sheep on another person's land, do the chapter officers still handle these problems?

JS. They do not do it here. One time, about two months ago, I got there when the CAC [Community Action Committee of the Office of Navajo Economic Opportunity] was meeting, and this person whom I said filed a complaint came with his father and mother and sisters. His father is not well. It seems like there is something wrong with his head ever since he received a beating over these land problems. He said he told them, "Discuss this problem for me, and fix it up for me in some way, because they are doing injury to my land and my cattle." I guess he has his cattle over there. He tried in vain. Nobody even mentioned it in the chapter meeting. The chapter officers did not even talk about it. "How shall we discuss this matter for him, and how shall we fix it up for him? What do you people think about it?" They did not even say this.[14]

LJ. What about a long time ago?

JS. At that time, people used to say at a chapter meeting, "Discuss this thing for me." And they used to talk about it and they used to straighten them out. But even then, there used to be some heated arguments, but it was mostly the people who were sitting in the rear of the room that caused these.

I will tell you another thing. There was this one lady from Tohatchi who had an allotment here. This allotment belonged to her father and mother and sister and her. She said, "Do not cut wood out of there, and do not harm the trees." She came in here for that purpose at the meeting, and there were a lot of people there. The chapter house was almost full, and someone kept getting up and asking, "Why don't you talk about this problem for her?" I was the chapter secretary then. And the lady said she was going to fence in this piece of land. "It will be good only when you fence it in." She also said, "Do not use the water," because there was a spring on this land. But now this piece of land is fenced in. It was because of this that one person got into a fight with another. "We have been in the military service, and we respect the flag. This is the way we think about it. One was saying. This is what he was telling about. And then the other, he started it. He said something

disrespectful about the flag and the whole United States. He said something really bad about it. This was the reason why the first person socked him right in the mouth at close range.

LJ. And then what happened?

JS. And than they got into a fight, and the disrespectful one went flying into a chair real easily. And he wasn't strong, so they just grabbed him and took him away. And he tried to get loose. He grabbed a chair and was holding it over his head, and then somebody grabbed the chair from behind and he almost fell backwards with it. This happened just recently.

LJ. Was this discussed at Crownpoint [in the court]?

JS. Yes.

LJ. Who filed the complaint?

JS. The patriotic one.

LJ. When did this business of having things heard in court begin?

JS. When was that? It was after 1950 when we got the police back. Then they started doing things in court again. And then the number of policemen increased, the ones from the Navajo Tribe, and now the ones who get themselves in trouble are taken over there. But some people do not like the manner in which their problems are discussed. They say that their problems are not handled properly, even the person that takes care of the land.

LJ. What is it that they really don't like?

JS. Because in some cases the people are really telling the truth, but the judge just dismisses them. I saw this happen several times. I do not like this. Even when they discuss land problems, it just really doesn't seem right to me. They do not solve anything for us.

LJ. Today, when things are being discussed in court, we use mostly Anglo law and Anglo methods. Do you think it should be like that?

JS. I think that is very harsh; don't you think it is?

LJ. I don't know. Should it be our own way?

JS. It's better that we have the Navajo Tribe fix these things for us. This is good. If they do a good job and follow what they have to say, then it will be good. I guess some of them do not know what it means to have something handled properly. Some of them knew, and they really take advantage of others. Some of them know what's going on, and others, never having gone through it, just get lost. These are the ones who have their cases dismissed and it just ends right there.[15]

LJ. What do people think when one or both parties use attorneys? Do they like it?

JS. That is good. Because some use DNA and others use Navajo Legal Aid. That is pretty good. When they really tell the truth, then it is good. But when they tell lies, then it's no good. Because they raise their hand and they say I'm really telling the truth, and then after that they start telling all kinds of lies. That part is in writing. Because they raised their hand and they said they were going to tell the truth and yet they get on the wrong track.

LJ. This thing we call inheritance, how was it discussed a long time ago?

JS. You mean things that belong to you?

LJ. Yes; like when somebody dies, if he owned some property like sheep or other things.

JS. Back then, the relatives used to really raise a fuss about these things. Maybe it was their male elder ancestor [headman], so when he died, they would say, "I want this many sheep," and they would take them. This is what they also say.

LJ. Who was the main person who used to take care of these things?

JS. I guess there was none in those days. It used to be the people themselves. These relatives, they used to take over the whole thing. And they even used to have arguments over the medicine man's paraphernalia. They used to say, "This is what I contributed, the arrowhead and such other things as the sacred mountain dirt." They would say,

"This is what I got, and it was tied up for him." And they would ask for these things. I know who now has the one that used to belong to my father. They call it "medicine." I don't know what it really is. I used to just see my father carry it around in the straw basket. The Salt Clan raised quite a fuss about it for quite a while after my father died. That was not long ago. They used to argue about it like that. Just like my husband's father, they used to call him Tach'iini. This thing they call gahahazhjéé' [Enemy Way ceremonial pouch]--medicine men who perform in the Enemy Way Ceremony carry around this thing. My husband's father, Tachiini, had these two elderly male relatives [headsmen] and they were trying to get this paraphernalia from him, even though it was given to him and he had it for a long time. They filed a complaint against him, but Tachiini had already had several hearings about it. But the paper that had been prepared for him was upheld, and this prevented them from taking this away from him. This was not too long ago, too.

LJ. What if the man had a wife?

JS. They never used to consult her or let her have her way.

LJ. What if he had some children?

JS. He had some, and they should have said, "This is ours," but they didn't. They could have said, "This is how much we paid and this is how much money we contributed when it was made."[16] It was probably made with doo k'aa k'eh [the hide of a deer or fox that is unwounded by bullet or arrow and is used to make medicine paraphernalia]. I really don't know exactly how it was made. "This is how I got it, and this is how much I got," they should have said. And also, there is this thing called dił daa, used by medicine men who specialize in Life Way Ceremony. I don't know what he did with it. He used to have it. They say that if you do not know how to use these things, you should not have them. I guess that's the reason why he just gave them away to some man. And he did not sell them. He just gave them away, because we thought they weren't supposed to be sold.

LJ. And we also learned that when a person dies, it is usually the mother and her relatives who were the ones that used to grab everything.

JS. Yes; that's right. That is the way it used to be.

LJ. Not the man's father or his brother or his sister.

JS. Yes; that's true. At that time, it was mostly the clan relatives that were the ones to say "Let me have this."

LJ. But now, you don't have these types of meetings around here anymore, do you?

JS. That's right. Now everybody has learned the way that the Anglo does this type of thing, and it seems like the relatives can no longer grab anything that they want. They are told that this man already had a wife and children, and they now say it belongs to them. We have now started in that direction.

LJ. When we first got judges, we used to elect them; is that right?

JS. Yes; that is right.

LJ. Is it good that way? Or should we have only one regular judge?

JS. Personally, I don't like to see just one judge sit all the time.

LJ. You would rather elect them?

JS. Yes.

LJ. Maybe they can hold office for four years.

JS. Yes. I don't know if they really know what they're doing and whether they really went to school for it. This I don't know. I guess some of them really straighten out things good when they listen to some of these things. And some of them just listen to everything. They make big things out of little things. They bring out the things that happened a long time ago and point them all up. But some of the judges just listen to the things that happened now, and they straighten them out good. But some of them just roll it up with things that happened a long time ago, and the real thing just disappears in the whole thing. And then it's just thrown out.[17]

LJ. This word gooldi [court]; I wonder where it came from?

JS. I think it might have come from the Spanish people. Do you think so? I think the Spanish people mean court when they say that.

LJ. What did they used to call Fort Summer?

JS. They say hwéélđi.

LJ. Are these two words, hwéélđi and góóldi the same? Are they connected in any way?

JS. They are different. Maybe they were the same thing once upon a time.

LJ. Because it was like jail there where people were all brought together. Maybe it came from there.

JS. I think it came from the Spanish somewhere, because they were being held there like a jail. And so I think that word is also something Spanish. I don't know how they used to call it when it was like that. I don't know what terms they used to describe such things then. They were prisoners at that time. It seems like it was that way, just thinking about it. I think this term hwéélđi is also from there, from the Spanish people.

LJ. What is your opinion about these leaders [councilmen] that get together in Window Rock. Do you think they're doing any good?

JS. A while back--I don't know how many years--but for several years, it was not good. There were these two groups.

LJ. You mean when Nakai was chairman?

JS. Yes. It seemed like during this time they were planning and discussing things in two different ways and it sort of seemed like they were fighting against each other. This is the way we used to hear about it here. I did not like the way we came along during this period of time. It was not like that during the time Paul Jones was chairman. During that time, I was a member of the chapter officers. After those two took office, people were separated, just like they say it was a long time ago. But now, maybe, we have all gotten back together. I really don't know. But I never go over there either. At that

time I used to go over there, but now I don't do it anymore. Maybe now they are doing a good job. We only hear about them through the radio.

LJ. When you were a chapter secretary, did you ever take care of any of these problems that we're talking about--problems where people hurt one another or get into disputes?

JS. No. We were going to try to resolve this problem that I mentioned where there was a fight at the chapter meeting. We never did resolve this problem. And then, also, several times there were cases where the chapter officers would get out of the way and the people would pick some other people who they wanted to hear their problem, and not chapter officers. But they still used to record these hearings. They would choose three people, and they would listen to the problem. And in this way, they would resolve any disputes that might have existed. This is what they used to do.

LJ. For how long a period of time did they used to do this, as far as you can remember?

JS. Just recently, but it seems like it started all over again, not too long ago. But they say from there, like the BLO, they say that if you have any problems, such as land disputes, bring it to the attention of the chapter officers and let them straighten it out for you; but they do not do this. They are scared of it. I don't know why. They do not bother with things like this. But the CAC sometimes give lectures to certain people.

LJ. You mean now?

JS. Yes. It's like that. We who live around here--like if somebody was not living right, and if there were some friction, they would report it to the CAC and they would talk to them. This is what we hear. But I don't know all the things that have happened just recently.

LJ. When was it that that man was picked as a gossip killer?

JS. Oh, yes. He used to be the head of that. I don't even remember. I don't remember how many members there were. That was long ago. I don't know if they still do that. People used to spread rumors about various people--

like our own woman from here used to do that. She used to spread a lot of gossip among us and as a result we used to get into a lot of disputes, but now she doesn't do that anymore. After she joined the peyote cult she quit doing that.

LJ. I wonder whose suggestion it was that resulted in him being picked for that purpose.

JS. He was picked from Crownpoint [seat of the Indian Agency offices], because that was where he was given that name. The name was from there, and that's where it started.

LJ. From Crownpoint?

JS. Yes. They said he would be the one to stamp out all the gossip.

LJ. How many years ago was he placed for that?

JS. That was about twenty years ago, or somewhere around that time.

LJ. He was picked for that job until now?[18]

JS. Yes. And sometimes he was also a chapter officer.

LJ. I wonder if he did do some of that type of work?

JS. Yes. He did a little. He did pretty good. He used to really talk to people. He is still like that, but now he is really old. Sometimes he begins to talk too much when given the opportunity.

LJ. How many others used to sit with him? How many?

JS. I think he was the only one, plus the chapter officers.

LJ. Were these meetings held in only the one place? Or did he used to go among the people?

JS. No. Just right there. Just at the chapter house only.

LJ. Sometimes today in different places when a man

and his wife get mad at each other, or when they have an argument, sometimes the wife's mother or her parents or else those of the husband get together and talk to both parties. Do they do any of this around here?

JS. I don't think there are any. I just heard this recently. There is a man who is messing around with another woman, and yet he is mistreating his wife. They say he is the one that fought, but he is still mistreating his wife, and so they are trying to persuade the woman to return to her father, but she won't do it. But there is nobody doing anything about this. That is just the way it is.

LJ. What about a long time ago?

JS. A long time ago, they used to always tell the father and mother of the man if he is the one that is doing it, or else, if it is the woman, then her parents, and they used to lecture to them separately. They never used to bring them together. If it was straightened out, then it was straightened out. If it didn't get straightened out, then the man just left. And then they would say, "So-and-so has deserted or abandoned his spouse."

LJ. When a certain person pawns something, how does he think of this transaction?

JS. You mean, just the individual?

LJ. Yes. In terms of whatever he pawns and the trader.

JS. Well, right there, when you pawn, you always think that you're going to take it out; and if you are able to, you will. Some do not do that. They pawn something, and then the pawn just becomes dead. When I was working at the trading post, that is what the man there used to tell me. He used to say that some do not bother the things that they have pawned. But some, who have had these things for a long time, take them out right away. As soon as they get the money, they take them out. The one that is taking care of the store now is the same way. You can pawn things there.

LJ. For what period of time does he allow you to pawn?

JS. From about three to six months. That is all.

I just pawned something recently for $100, and I haven't even paid back a penny. I don't know why it's done. There really is no purpose to it. Although there is no purpose to it, you just pawn something and then, when the time is almost up, you start running around trying to redeem it. Maybe you start depending upon a rug. You finally get it done, after putting in so much time, but somebody like this one certain trader always just takes off with it [the pawn].

LJ. You mean, even before the time expires?

JS. I guess even before the time expires, because one time I heard that he took quite a bit of it down to Phoenix. And then his store was shut down. I don't know who did this. The store was shut down for about one year. He must have reopened it sometimes last spring, because I just heard him singing through the radio again last spring.

LJ. Are people around here stingy with firewood?

JS. Yes. Even that has ruined us. When we were given the certain piece of land, even though the person only pays for the grass, we are told to ask the person who is paying for this piece of land first before we haul wood out of that area.[19]

LJ. What about water?

JS. Well, they don't bother with that very much, because people were hauling water from there all summer long. I don't know where they took the water to.

LJ. What if he has his own dam? Will he raise a fuss about it?

JS. Yes. He will raise a fuss about it. Especially if the dam is located on his own allotment. If it is on a public domain, then it is meant for everybody. But then, if he is paying for it [the public domain], then that would also be a problem.

LJ. Do you mean since people were given certain pieces of land or since the grazing permits came into existence?

JS. No.

LJ. Do you mean these allotments?

JS. No. I think the grazing permits came into existence around about 1930. I mean the very first ones. The ones that were issued out of Farmington.

LJ. And those, I think, came into existence about 1940 or 41.

JS. Those have expired. Just recently, around 1966 or 1967, that was given back to the Tribe. From then on, the land was given out to those people who brought their sheep to the sheep dipping.

LJ. Do you mean from there on?

JS. Yes. Before that time, they used to only count the sheep and say, "So-and-so has so many," and these were reported back to Crownpoint. It was according to this that we heard that we would have to begin paying for it. I don't know how this was decided. Maybe it was according to the Land Board. And then we were all asked how large an area we were using. People were saying, "This much," and there were others, like this one person, who staked out an area that was larger than what he was using. He said his was all the way to Tse deschii'i. I don't know how he was going to take his sheep over there. He picked out an allotment which belonged to his wife's grandmother. But there were other people who were paying for this. He picked out the allotment as free use. From that time on, we have been living sort of in a bad way, and we won't even let any sheep come near us.

LJ. From what time on do you mean? Do you mean just from 1940 on, or just recently? Or from 1966 and on?

JS. Yes. I think it was from about 1966 and on. That was about the time that we were all given a piece of land.

LJ. So, from that time on, if you wanted to haul some wood--

JS. Yes. If you want to haul some wood, you have to obtain permission first. But it seems like the people around here do not really raise a fuss about it, because we see a lot of people haul wood out of here out toward

Dalton Pass and Crownpoint. I just see them hauling wood over there. I don't think they say anything; but us, we don't have any wood right here nearby--only far away in places where people have their own allotments.

LJ. Is there a Navajo word for "trespass"?

JS. I guess it would be "herding in your livestock over somebody else's land."

LJ. What if you just walked onto somebody else's land? Would Navajos ordinarily think of that as trespassing?

JS. No. I don't think so. Only when something that would eat up the grass came onto their land--not if you're just walking on the land. But if they obtained a peace bond, then I guess you couldn't.

LJ. What if you just rode across somebody's land on horseback--would they think of that as trespassing?

JS. No.

LJ. So, only when your horses or cattle or sheep went onto the land and ate some of their grass.

JS. Yes. Only then would it be trespassing. But this man that I'm talking about just lets his horses loose onto our land. I think there's about seventy-one of them. But I don't know how they're going to survive because there's no place for them. It just seems that way. No wonder our neighbor sold all of his, the ones that he used to herd across. There are no more. I guess they would have to build a home over there where somebody can stay there all the time. I don't know how we are living.

Footnoted Commentaries on Interview with Jeanette Saunders

1

SC. In this case, a woman gave remuneration to the wife of a man that she slept with. This means that the wife has sexual rights in the husband, as well as the husband having sexual rights in the wife.

2

SC. "My older sisters," indicating the informant's aunts.

3

SC. The indication here is that the woman--if the man left, and the woman didn't care, the woman just stayed with the property; but, if the woman wanted the man back, the woman would go and abuse the second woman. Again, she would be able to challenge that woman because that women had stolen sexual rights that the wife had in her husband.

4

SC. He pays the relatives of the new woman for taking sexual rights in her. He does not pay the woman he left. On the other hand, it may be that the woman left may require payment from the second woman.

5

SC. Naat'áani Yázhí was the superintendent at Crownpoint during the 1930's.

6

SC. What her father had done, was, use self help in a situation where cows came over to graze in his area. This was basically a form of taking care of animals that were trespassing on his property, although, at that time, the property was not divided by law. But even in that time there were customary use areas and customary grazing areas; and disputes did arise when people herded their livestock through the land of somebody else in order to get to water.

7

SC The informant here refers to the murder of two Navajo Policemen near Thoreau, New Mexico somewhere around the early 20's. The two policemen had arrested a

Navajo but the cause of the arrest is unknown. On the day they were shot, the two policemen were very tired and had stopped to eat. They took the handcuffs off their prisoner and asked him to cook. After the meal the two policemen lay back and soon fell asleep from exhaustion. The prisoner then took their guns and killed them.

The prisoner then fled and avoided his captors for quite some time. One of the policemen who tried to capture or kill him was John Perry, now deceased.

While this hunt was going on, another Navajo named Paddy Martinez became angered because the man who was being hunted was a member of his clan (Salt). Sometime later Paddy Martinez shot and wounded John Perry on the arm. The wounded arm was later referred to as "the salt clan's arm."

The prisoner was finally shot and killed near San Antone between Crownpoint and Thoreau by John Perry.

The informant apparently has Paddy Martinez and John Perry confused. The version reported here has been confirmed by several different people.

8

SC. In this example of a traditional tort, the horse was either used to remunerate the victim, or it was used to pay the medicine man who healed the victim.

9

SC. This indicates to what degree of exactitude trespassing by animals, where damage was done, was remunerated. This is to be distinguished from grazing on another person's land where no damage was done.

10

LJ. Right there, when Jeanette refers to "these livestock," she's referring to the horses of a certain man who lives not too far from where she does; and this man has been letting his horses wander onto other people's

land and use areas. And the people around him have raised a lot of problems and complaints about it, and there has been fighting, and things like that.

SC. And it's indicative of the fact that, as she says, when the land was marked off, the problems of wandering animals also became a problem. People took more seriously the fact that animals were wandering on their land.

11

SC. The Land Board is composed of local leaders elected from the grazing districts. It is indicative of an extension of a delegation of authority from the Branch of Land Operations of the Bureau of Indian Affairs to the Navajo community, to settle through an administrative hearing problems with regard to land usage, grazing, and passage of land rights and allotments and use areas to individuals or communities within the Eastern Navajo Agency.

12

SC. A very perceptive comment by the informant. In many cases, the Land Board, rather than go out to the area and listen to the opinions of all the people, as in the traditional approach, as it was in the traditional hearing, will simply listen to one side of the complaint and write a letter, without listening to the other side, telling people not to do something. In this case, they create a great deal of frustration and bitterness, especially if the complaint is wrongfully filed with the Land Board. This is one problem of the Land Board. It neither follows the traditional means of resolving disputes, nor does it follow administrative due process, which would allow for all persons who have an interest in the complaint, especially the person complained about, to come to Crownpoint to a meeting and to tell his side of the story, before any decision is reached.

13

SC. This indicates the problem of proof of individual grazing permits. By depending strictly on customary use areas, there are problems in terms of descriptions when

one points to natural landmarks. Fences, in many cases, are preferable in that sense, as a matter of proof. On the other hand, when a fence is put up, as the informant indicates, people have to go the long way around, and other individuals may be hurt by the fence, physically hurt.

14

SC. The point here is that, although an individual brought a complaint to the CAC, the Community Action Committee, neither they nor the chapter officers would do anything to resolve the problem. In many cases these land disputes are now deferred, both by the Tribal Courts and the local officers, to the Land Board. And this, in many cases, is unfortunate, since the chapter officers and the CAC are close to the situation and can go right out to the locale and resolve the dispute, whereas the Land Board may not be able to travel around and make the appropriate investigation.

LJ. Let me just add this. I think that part of the problem here is just the attitude that the chapter officers in this particular community have about the responsibilities and the duties that they have. They don't feel that it is with in their realm of duty and work to go and solve these problems. The chapter officer here is a member of the Land Board, so he always just throws it back to the Land Board.

15

SC. The informant makes another perceptive comment here. People take problems to court and really expect the court to find a solution for their problems. Instead, because of technicalities, especially the problem of the person not understanding how to relate his problem to the law as it exists, the judge may discuss the case. On the other hand, people who understand the law can take advantage of it, and either keep the court from acting, or have the court give an order that would benefit them and their side of the problem. This is definitely an important issue and relates to the differing understanding by differing members of the Navajo Tribe of the workings of the Tribal Court; but, especially, how they can have the Court work for them.

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16

SC. The informant indicates that when the relatives scrapped over the distribution of property, excluding the wife from consideration, a great deal had to do with where the deceased got the property. Also the claim was made that, although the deceased was the formal owner of the property, that it had been bought with the help of the person who wanted it. This is an interesting question to consider--for example, automobiles, where often times although the title is in the hands or in the name of one individual, another individual, who is out working, may sent money back that goes to pay for that car. In this case, the legal title is distinguished from the traditional idea that the person who helped pay for it also has a share in the ownership.

17

SC. Jeanette Saunders indicates that there are two kinds of judges. Some judges, who have not been trained, allow for all the past history and general circumstances surrounding the act to be brought into the hearing. On the other hand, the trained judges are more technical and only allow the specific facts of the dispute to be brought before the court, in the form of direct testimony, and not gossip or hearsay.

18

SC. In the preceding colloquy, they discuss another figure in the traditional or, perhaps, transitional legal system. This was a man who was known as the gossip-killer. He would bring people together and stop individuals from talking badly about other people, thereby provoking fights in the community. The informant suggests that this role of gossip killer emanated from the agency superintendent, or from the Indian agent--a suggestion that a person take this particular role. What this also might be, though, is, when the agency superintendent asked local leaders to resolve disputes, the characterization of the role of these local leaders might be as gossip-killer, which is to be distinguished from judge, because the judge was seen as a person who could inflict punishment, whereas the gossip-killer, perhaps, was more or less of a conciliator, as he worked to get people to quit talking about each other.

19

SC. This points out an interesting problem in terms of the division of land into individual ownership--that if a person needed to haul wood and had no accessible wood on his own land, he would have to go and get it from another area of woods; and this land, these woods might be on a person's individual allotment. But it seems that, if one asked first, the community was allowed to continue to use its commuinty wood supply, despite the fact that a private owner had the right to use and possession of the land for all other purposes--a Navajo private owner.

INTERVIEW WITH MARTHA HENIO

Community Worker, Ramah, New Mexico

SC. Would a problem concerning a neighbor's livestock grazing on someone's land be brought before the chapter, or would it be a matter for the grazing committee?

MH. Those things are brought before the grazing committee if it has something to do with livestock on somebody else's land, but usually people don't say anything about livestock that belong to the Ramah Navajo. Nobody hardly says anything about it then. Most of these lands are out in the open, not fenced. But if it's somebody else, like the white ranchers around here--they're the ones, you know, that they complain about the most--somebody would remind them that their cattle--

SC. You mean the Chapter? Do the white ranchers ever go to the Chapter House?

MH. No.

SC. So, then, you're saying that at your chapter house, you were secretary from September 1969 until June, 1970; and during that period of time there were five cases which were brought before the chapter officers--two marriage cases, and two cases involving property of deceased individuals, and one liquor problem. And these cases were brought in front of them and heard there and resolved there?

MH. Not at the chapter. There were only two cases that were heard at the chapter. Otherwise, we went to the home of the individuals that wanted these settlements and had problems to be settled.

SC. How was it that you happened to go to the home of the people in some cases and not the other cases?

MH. The family of the couple told us to come to the house, rather than them going to the chapter house.

SC. In other words, a member of the family communicated with the chapter officers?

MH. Yes.

SC. Privately, outside the meeting?

MH. Outside the meeting.

SC. And in the other cases, did they get up in the meeting and start it off there?

MH. No.

SC. Or how did it happen that the chapter officers heard?

MH. No, they notified us ahead of time that they had a problem. Not the parties involved, but somebody else would come and say, "They've got a problem, and we want you to help them out. Talk to them and see if you can help them." And so the officers usually would set a date as to when they would talk to the individuals.

SC. All three of you?

MH. All three of us.

SC. You mean, the president, the secretary, and the vice president?

MH. And sometimes our Tribal Councilman was there. You see, in two cases, he was there.

SC. Which were the cases he was there?

MH. One of the marriage cases and one of the property settlement cases.

SC. Did the people who came to see you ask specifically that all three officers be there?

MH. Yes, that's what they usually did.

SC. Now, in these cases, were these people related? Closely related, let's say? I don't mean just related. Were these people closely related to one of the chapter officers?

MH. Both of the marriage cases, and that's about it.

SC. In the marriage cases, people involved were closely related to one of the officers?

MH. Yes.

SC. But not in the case of the intestates, the property cases?

MH. No, and not in the liquor case.

SC. Did you go to the homes of the people who complained?

MH. We went to the homes of the people who had the problem.

SC. In all cases, were all the people involved in the problem living right in the same house?

MH. Right.

SC. Now, do you have any opinion as to why these people wanted to have their cases discussed at home? As opposed to the chapter meeting?

MH. Well, I think this had been going on a long time, and in the marriage case, for example, they felt that it was a problem between the two couples, plus the mother and the father and the brothers and the sister and probably an uncle, and it shouldn't go outside the house. Not in the open before the whole chapter. That it was something that could be settled among those people, with the help of the chapter officers.

SC. One marriage case was discussed in the home. In the other case, apparently, they wanted it to be heard in the chapter. Would there be any reason why that would be?

MH. They lived close to the chapter, and that was one place where we could meet.

SC. Could anybody come in and listen to the ones that were heard in the chapter?

MH. The marriage case, just the people who were notified.

SC. And you notified them?

MH. Yes, the officers told them.

SC. But other people in the chapter couldn't listen, is that it?

MH. Well, yes, I guess they could come in, but nobody knew about it.

SC. Good, now let's take the two marriage cases for a start, because they might be more similar.

MH. Okay, but let me tell you a little bit about the property of the deceased. The reason that we had that one at the chapter was that our grazing committee head was a chapter officer before and was one of the community leaders. And the family of the deceased wanted to have it at the chapter house.

SC. Okay, now, going back to the marriage case, could you tell us, in a summary fashion, what were the problems in each of these marriage cases? Number one, what were their problems? Number two, what did the people want the chapter officers to do? And three, what did the chapter officers do?

MH. Okay, the problem with one of the couples was drinking in one of the family. They couldn't stay together, and--

SC. Who was this we're talking about?

MH. The husband was the one that was drinking.

SC. Who did they live with?

MH. They lived at the parents of the husband.

SC. Now, who complained in that case? The husband's family?

MH. Yes. The lady is not from Ramah. She is from Fruitland, I think.

SC. She and her husband's relatives complained?

MH. Yes.

SC. And what did they ask you to do? The chapter officers?

MH. They asked me to come along and take minutes of what happened.

SC. So you can't be sure what exactly they asked the officers to do, is that it? In other words, did they come to the officers and say, "We'd like you to give him a lecture" or what? Or, "We'd like you to hear this whole story"?

MH. Yes, that's what they said, "We'd like you to come and help settle this problem. Come and talk with the couple and find out what's wrong," because usually the couple didn't try to talk about their problem with the father and the mother.

SC. Who was there, just the members of the family? Or was this the one at the chapter house?

MH. All the three chapter officers, plus both parties involved. The father, the mother, and two sisters, and a brother were there at that meeting.

SC. And who talked?

MH. Each family member there talked, plus the chapter officers talked with the couple.

SC. And you have that written down?

MH. Yes.

SC. And what happened, finally?

MH. It was finally settled that they would go see a marriage counselor. They have one down at Zuni with the BIA. They would try to talk to them. They both agreed that they would try to make a better home for their children, because they were the ones involved. Otherwise, the lady said that she would file for a divorce, but she couldn't because she would have to raise her children without a father. And it seems like there was another woman involved at that time. So he said that it was true that he drank and all this sort of thing, but it was because it was her fault, that she was driving him to do this.

SC. And what did the others say?

MH. The mother began by saying she didn't know how they got together, that they didn't have a Navajo wedding or a marriage, that they just got together and had been living together since then. And she knew that a problem existed between them, and she talked to them once or twice before, and things seemed to straighten out. But mostly, the mother and father and brothers and sisters felt like it was the man's fault because he just kept going off. The lady, she stayed home, and also was working at that time; and she's a little bit older than the man and she stays at home most of the time, and she's known for her believing in all this sort of thing; and he's very young, like about twenty years old.

SC. Now, what did the fellow say?

MH. He said it was because she always suspected he was with somebody else at all times, and he does have a drinking problem. He went to the PHS hospital for help to see if they could help him. He got all the pills. That's what they let him have. But even then, you know, he just went ahead and started drinking. And he wanted the chapter officers to help him.

SC. Now, what did the chapter officers have to say?

MH. The first thing they asked about was did they have a marriage license and said, "It's best that you get a marriage license," and "Stay together," and all this sort of thing. They just went on telling them facts of life not being married, what's the responsibility of the husband, and what's the responsibility of the woman, and that the lady shouldn't be suspecting her husband with other women, that he's just out working, that that's just the way it was. She felt like he was with other women when he was just working, or when he just went into town, or when he's with his friends.

SC. Now, the kind of thing they were talking about, were they just saying what the church would want a husband and wife to do? Or more about what a Navajo should do or should not do? Or the law?

MH. I think all of these three things were involved. The chapter officers belong to one church, while the

parents and the family there belong to a different church. The chapter officers at that time belonged to a Christian church, whereas the parents belonged to the Mormon church.

SC. And what about the young couple? Did they belong to any church?

MH. I don't think so, but they went to the same church as their father and mother, but not very often. I don't think they went together.

SC. Would you say that any of the chapter officers had what you'd call a traditional outlook? About what is good and bad?

MH. No, I don't think so, but they always bring this up, that our grandmothers and grandfathers used to say this, and this is how a marriage should be, and this sort of thing.

SC. They discuss it in that context?

MH. Yes.

LBJ. What are the educational backgrounds of the couple?

MH. The man graduated from high school. I don't know about the lady. She had about a sixth grade education, I would say.

SC. Now, what about the second marriage case?

MH. This was just a dispute between the wife and the husband. The man was on the HITP program, and he had just a small wage that he would try to build up, and he would go off to work. And they had a house on their own land, but they stayed out near the chapter house, so he could be there and not be late for work, but sometimes he had to go to the ranch to work out there; and he had brothers that came around and that drink, but he doesn't drink that much--I mean, nobody has seen him drunk in public, but she accused him of drinking and giving them moral support and that sort of thing.

SC. Now, apparently, they didn't live with either one's parents.

MH. No, they didn't.

SC. They lived off by themselves?

MH. Yes; the girl doesn't have any parents. They're deceased, and with the man the father's living, but he's not in Ramah.

LBJ. About how old was this couple?

MH. At that time one was about twenty-one, and the other was about twenty-seven.

SC. Now, who complained to the chapter?

MH. The brothers and the sister of the two people.

SC. On whose side?

MH. The girl's side. And I guess she requested that they come before the chapter officers and see if their problems could be solved. She said that she felt that he was working for the chapter, too.

SC. Was this at the chapter house, or at their house?

MH. This was out at the chapter house.

SC. And what happened?

MH. We gave each a chance to say what was on their mind, like, first we told the girl to give her story, of what was wrong, of what was going on with the problem, what she thought was the problem in her home. And also, her sister said a little. She added a little to what the girl had to say. Then, after that, the husband also had a few things to say. And also, there was no marriage license involved, and that was one of the main problems.

SC. Now, what was the outcome of this?

MH. They both agreed to try to live better, and also to get a marriage license.

SC. As you were growing up here, did you ever attend any hearings like this at all?

MH. No, I never did.

SC. Apparently there used to be some things called court meetings, where occasionally it seemed that people would go off to jail at Blackrock. We don't know if it was the Tribal Court or an informal thing, or what that was. This was back in the late 1940's.

MH. I remember; that's when my father was taking care of the store out that way. I guess maybe three people were involved. They took the jewelry from the store and hid it somewhere, and I guess that was the time that some of our people were involved in trying to get the jewelry back without sending the person to jail or anything of this sort.

SC. This was from the co-op. What happened?

MH They caught this one guy and tried to make him tell, but he wouldn't talk, so they kept him in prison for three days, and they questioned him constantly, and finally he admitted that he was involved, but he didn't have anything to do with the jewelry or where it was. He named the people that were involved so I guess they threatened these people--that is the way my father used to tell us about it, you know they said, "If you don't bring it back, you might have to go to prison for so many years." And finally he got them back. They sat with him till late late that night, and finally he left and came back in the morning with the jewelry.

SC. Is that the only kind of case like that that you recall?

MH. Another time, I remember that there was a boy staying there at the house, and I asked my mother why he was staying there at our house. She told me that he had stolen from the store or did something, but he was put to work there.

SC. So they did that instead of calling the police? That was in when, the late 1940's?

MH. The late 1940's or early '50's, I guess.

SC. Let's go back to these next two cases, then. When people had died. One person, you said the person

was an important person on the grazing committee. What happened then?

MH. He represented District 5 Grazing Committee, and also he was a chapter officer for the four years before he died. And he was also a preacher for one of the Nazarene churches. And he was pretty well known in Ramah. Also, probably in other areas. The family was undecided as to what to do because he was the only one who kept things together. The brothers and the sister, plus his own family, and when they got together, they decided just to keep the herd as it was, and everybody would pitch in and help and try to keep the livestock on the level as it was. He probably had more livestock than almost anybody else.

SC. So, rather than divide the livestock, it was decided at this meeting to keep it together.

MH. Yes, it was decided to keep it together.

LBJ. What other property did he have?

MH. Land property.

SC. Did you take care of that there at the chapter?

MH. No, we didn't.

LBJ. What kind of land was it?

MH. Allotted land.

SC. Let me ask you one thing, going back to that second marriage case. Did you say what the church affiliations of those people were?

MH. The second one?

SC. Right.

MH. Okay, almost everybody there belonged to a Christian church, the Nazarene church. They had a traditional wedding, and the people that were there at the wedding were also there at the time when the chapter officers talked to help people; and they reminded them of how we had this wedding, and we made

speeches as to how a man and wife should live, the duties of the wife and husband, and you did not listen to us.

SC. Now, what about the second case of property?

MH. A lady died, and she had a grazing permit, that's what the dispute was over. She didn't have any children, but there were two grandchildren of the man. She willed the grazing permit to them.

LBJ. What kind of a grazing permit was it? Was it from the Tribe?

MH. No, we get our grazing permits from the BIA.

SC. How long ago was this?

MH. It was about two years ago. --No, three years ago.

SC. Who was the dispute between?

MH. The sisters of the lady, plus the grandchildren. The husband of the deceased lady didn't want any of her property to be divided, but people had already gone in and started taking things from his house.

SC. Who? Her sisters?

MH. Her sisters.

SC. What sort of thing?

MH. The things they had been taking were like blankets; also, she had a whole sack of wool all ready to be made into rugs. Those were the things they had taken. And they also took some sheep.

SC. So, who came and complained, the husband?

MH. The husband, and also the grandchildren.

SC. Were they old, the grandchildren?

MH. Uh-huh. They were about maybe twenty-eight and thirty years old.

SC. And she'd written out a will, you say?

MH. Not actually a will, you know, but she mentioned it to a lot of people, and just everybody knew that things would be going to the granddaughters.

SC. So now, what happened? Where did you have this hearing, at the chapter house, or where?

MH. At her house.

SC. And what happened?

MH. It was finally settled that the herd would be kept in one herd but because the man was getting old, the grandchildren would be the ones to take care of this, and the brothers and the sisters would also help out. And they all agreed to it; and as for the property of the lady, nobody else was supposed to take anything else from that house, because the husband was still living there.

SC. When her husband died, was the idea that her sisters then could take the property?

MH. No, the grandchildren.

SC. What about the sisters? Did they get a chance to speak at this hearing?

MH. Yes, they did.

SC. Well, what was their position as to why they thought they were entitled?

MH. They just felt like since they were her sisters they were entitled to get some of her property. They mentioned that she had talked about giving certain things to her sisters, and those were the only things they had taken when they came to the house. But the man denied their story and said that she never mentioned anything about anybody taking some of her things.

SC. Did they mention that traditionally the property would have gone to the sisters? You know, to the mother's clan? Was any of that brought up?

MH. No, it wasn't brought up.

SC. Did the chapter officers mention that?

MH. No.

SC. So, in that case it was decided that the herd was to be kept together and everybody would help keep it together, and the sisters would not take anything more. But on the man's death, everything would go to the grandchildren.

MH. Right.

SC. Was this written down?

MH. Yes, it was written down, and I have these papers.

SC. Did you write down on the marriage cases?

MH. Yes.

SC. Did anybody sign it?

MH. Yes, just about everybody signed it.

SC. Now, suppose in a case like this somebody doesn't abide by the agreement. What would happen next?

MH. It would come back before the chapter officers. The chapter officers at that time would read out the notes and tell, you know, at this meeting we had discussed that this was how it was settled. They could bring up the case again and work it out as to satisfy everyone.

LBJ. Suppose that one or both of the marriage problems were not resolved. What would happen?

MH. Well, this one, they still have their ups and downs.

SC. Which is that, the first one you talked about?

MH. The first one I talked about.

LBJ. It wasn't resolved?

MH. No, it wasn't. They got together, and they're still together, but the man is never home. That's the problem now. And the parents of the man won't let her

go; they won't let her go back to Fruitland. They want her to stay here with their grandchildren. So she has never gone back, and she stays with his family. They stay at that house they have been living in since we had this case.

SC. But it never came back to the chapter officers then?

MH. No, it hasn't. They said at that time that they would try and see a marriage counselor, but I guess that they didn't see one or anything. But for a while things were all right between them. I guess it's the drinking problem of the man. He stays away for long periods of time before he comes back and stays with his family for about two weeks, and then he goes off again.

SC. Now, what about this last problem, the liquor problem? What was that all about?

MH. That was brought up by the mother, the mother of the man. The two people were having liquor problems, and other people were beginning to be involved. They would go to the couple's home and start drinking there, and sometimes they would drink for weeks at a time, and they wanted us to help.

SC. Did this mother live with the couple?

MH. No, they lived close by.

SC. You mean really close by?

MH. Yes.

SC. Just a stone's throw away?

MH. Yes.

SC. They came to you to ask what?

MH. To see if we could talk to them and see if they couldn't try to work out their problems.

LBJ. Both the husband and the wife had a drinking problem?

MH. Yes, they both did.

SC. So, what did you do?

MH. We went to their homes. This time the chapter officers really didn't want to get involved. The couple didn't invite us or didn't say we could be there.

SC. The mother asked you to go to their house?

MH. Yes, we first decided to have it at the mother's house to see if she could bring the two people in, but then she said, "They won't come out, let's go there," so we just walked over to their house, and we told them that we were there to speak with them to see if we could help out with their problem. They didn't say much. The chapter officers did most of the talking.

SC. What did the chapter officers say?

MH. They just told them what drinking can do and how it can ruin, and all this sort of thing. The problem was they were just getting a whole lot of people involved. They got other members of the family to start drinking, and then they were never home anytime, and they had a son who is about a sixth grader right now. He was beginning to run around, and sometimes he didn't have a place to stay when his folks were gone, so he was staying with the grandmother all the time.'

LBJ. What were the ages of the couple?

MH. They were about thirty-eight or forty years old.

SC. What's their religious background?

MH. They don't belong to any church.

SC. So, what was the outcome of this?

MH. The outcome was, they both agreed to see if they could get help but they didn't know how to go about it, and they don't seem to try to get help. At that time, they said they would try, try to control themselves. We felt like we can't force them into doing something they don't want to do.

SC. Did they sign a paper like these other people?

MH. No, they didn't sign a paper.

SC. But in the other four cases you mentioned, they all signed papers?

MH. Yes.

LBJ. Everybody did, or just the chapter officers?

MH. The two couples involved, plus the chapter officers.

SC. You mentioned that there maybe some other cases, where people just got up and talked and complained in the meetings about problems? Do you recall cases like that?

MH. Yes, I do. There was a case, this was concerning grazing. It seems like one of the Mexican ranchers down by Fence Lake was letting his herd graze on the Navajo Tribal land. This was brought up in the chapter meeting. They decided that if he continued they were going to start charging him a dollar a day for each head that was coming.

SC. How were they going to charge a dollar a day?

MH. Per head.

SC. You mean, send him a bill?

MH. Yes. They would tell him this, you know, and say, "If your herds are wandering out on the Tribal land again, we're going to charge you a dollar a day for each head."

LBJ. Did anybody say that they would take the livestock into custody?

MH. Well, this is what they were going to do till he paid up that dollar a day.

SC. Have they done that yet?

MH. No, he never let his herd out again.

SC. What about problems involving a car dealer or the trader, anything?

MH. They were never brought up.

SC. Pawn cases?

LBJ. Nobody ever voices any problems? With the trader, or involving any bills or pawn?

MH. Outside the chapter they do, but it was never brought before it.

SC. Now, what about things that have to do with the Tribal Court?

MH. I guess this was brought before the Tribal Court. It never involved the chapter officers or anything.

SC. What was that? Anything?

MH. Anything.

LBJ. Do you know how long the judge from Crownpoint has been coming down to Ramah?

MH. Well, he's been coming out once a month for the last two years. But sometimes, you know, he comes once every two months, during the winter.

LBJ. He never came out here prior too--?

MH. No. We had to write a letter to him and request that he come out. We wrote it to the head judge in Window Rock, and then I guess he started sending out the judge from Crownpoint. It started back in about 1962 or something. I remember he used to come about once a month and then just stopped completely. Then we had to go into Crownpoint for hearings.

SC. Is that difficult?

MH. Yes, the only person that would help out would be the Tribal policeman. He would take people over there, but he usually gets another call from somewhere else, and then the people there have to find their own way back.

SC. From Crownpoint?

MH. Yes.

SC. Very difficult. Why is that five cases between

September, 1969, and June, 1971? That's really not too many cases.

MH. Not too many problems.

SC. You really think that's what it is? Not too many problems? Or do you think there are other people that resolved problems here? You have a community here that's what, how many families, would you say?

MH. About two hundred and some families.

SC. But still you think these were the only problems? Or that people don't think that the chapter is the correct place to resolve problems?

MH. Let me see. We had a problem that was brought up close to June, 1971. Around that time, an election was coming, and everything was at a standstill. And it seems like this man came out and talked with the chapter president, and he didn't notify the rest of us, and so we never went out to the man's house to talk with him. It was a marriage problem.

SC. Do you think there are other problems like that, that one chapter officer resolves without bringing in all three?

MH. I don't think so. Nobody went out there to the man's house. And another time, we were called to talk to some people and went over there and found out there was no problem. It was really just that they got too excited.

SC. But do you think the other marriage problems around go to the Tribal Court, or do they take them to ministers around here at different churches?

MH. I think that there were a few cases brought before the ministers and they tried to work it out at that level. Those were the people who go to church, or some people like the parents of the girl would go to the church minister or the members of the church and have a small meeting just like the chapter officers do to talk with them.

LBJ. What about people with land disputes? Are

there very many land disputes.

MH. We had a land dispute about three years back. This was settled by the BIA and the chapter officers. I was just there to take notes; and the lady claimed that she had rights to some of the land of her brother who was deceased in about 1954, but when the probate hearing came up she wasn't there, so whatever was settled there was legal right at that time; but it had happened about three years back; and she finally brought her problem to the chapter, and it was too late. We tried to explain this to her but she still felt like something could be done. But at that time, the probate hearing was closed. Whatever was settled then was legal. And also, besides that, the father had willed the land to his wife at that time, and then the wife willed the land to the five children; and I guess she made out the will at the BIA office down at Zuni because they had the will there. So that was settled that way.

LBJ. Do you have a grazing committee down here?

MH. Yes, we have a grazing committee. We have five members, where they have a chairman, a vice chairman, a secretary, and two members. They are elected by the people from each unit. We have five units.

LBJ. Is there a committee in existence now?

MH. Yes, there is a committee now.

LBJ. Do they have very many land problems?

MH. No, we never really have this. We started working on getting a range code so we can work like this, because the Eastern Navajo Agency has a range code, but that doesn't affect us, because we're under BIA from Albuquerque. The Tribe probably has a range code, but that doesn't cover us out here, so we want to get one drawn up for Ramah. We started this, and I guess the chapter officers that are in there are continuing to get it done.

SC. What about the issue or the problem of school attendance? Who do the people think should be responsible for that?

MH. I don't really know. The meetings we had with the parents, we told them, "You know your're responsible

for having your children in school," and this sort of thing. They must be in school every day, and it seems like the absence rate here is really high, but it's not the same students, except for about four or five of them that are always on the list, but the others might miss one day, and they won't miss for another whole month.

SC. But do the people think that the chapter officers should be responsible to see that their children go to school? Or people at the school themselves? Or the Navajo police? Suppose a child doesn't want to go to school.

MH. We started working on that. We've started telling people that these children have to be in school, and if they're not in school a suit can be brought against them for not having their children attending school.

SC. But do the parents think it's really their responsibility?

MH. Well, the parents had their children away at school for so many years, and the BIA had been baby-sitting for them for so long that they just don't quite know what to do with their children.

SC. Would you say there's the same problem with the children? The students who drink at the squaw dance, the parents seem to think it's the school's responsibility to stop them from drinking. Isn't that their responsibility?

MH. I don't know. When one of the students is drinking at the squaw dance and they get thrown in or something, the parents would come around and tell us. I told them not to do this. I told them that they must not drink at a squaw dance because it's a religious ceremonial for some of the people; and it seems like it comes from mostly Christian homes, that the boys will be drinking, or the girls.

SC. Well, why is it, do you think, that in the meeting we attended, the mothers seemed to feel it's the school's responsibility to look after these children who on the weekends are arrested for drinking. Is that from the Bureau of Indian Affairs experience too?

MH. Yes, I would say that. They've been sending their children off ever since they were small, you know, out here to the dormitory, and lately they started sending them to a lot of different high schools in border towns, or just Indian schools; and that's what they're used to. They don't know how to control their children or how to talk with them. They never talk with their children. They probably talk, but they talk at them; they don't discuss things with them.